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DT:D

DN: 583/94

STY:

PANEL: Sutherland; Robillard; Chapman

DDATE:280994

ACT:

KEYW: Delay (onset of symptoms).

SUM: The worker was struck in the face by the hook of a 50 ton crane. He was thrown about six feet and landed on his back. He suffered severe facial injuries. The worker appealed a decision of the Hearings Officer denying entitlement for neck and back injuries.

 The delay in onset of recorded complaint about neck and back disability for a year after the accident was explained by the severity of the facial injuries and by the medication the worker was taking for facial pain. The worker did not have preexisting back problems. The disability was compatible with the nature of the accident.

 The appeal was allowed. [9 pages]

PDCON:

TYPE: A

DIST:

IDATE:

HDATE: 120894

TCO:

KEYPER: A. Hodder; B. Lisson

TEXT:

WORKERS' COMPENSATION APPEALS TRIBUNAL

DECISION NO. 583/94

This appeal was heard in Toronto on August 12, 1994, by a Tribunal Panel consisting of:

S.J. Sutherland: Vice-Chair,
S.L. Chapman : Member representative of employers,
M. Robillard : Member representative of workers.

THE APPEAL PROCEEDINGS

The worker appealed the decision of the Workers' Compensation Board Hearings Officer, R. Berrey, dated November 23, 1993. In this decision, the Hearings Officer denied the worker entitlement to compensation benefits for neck and back disabilities which, it was claimed, could be causally related to his compensable accident of February 18, 1991.

The worker appeared and was represented by A. Hodder of the United Steelworkers of America. The employer appeared in the person of its compensation representative, B. Lisson.

THE EVIDENCE

The Panel had before it the Case Description materials. As a preliminary matter, the worker's representative, Mr. Hodder, drew the Panel's attention to materials in an addendum. Two of the Panel members did not have copies of this addendum. The Panel caucused briefly to obtain copies and read them. The Case Description and the Addendum were marked as Exhibits #1 and #2.

Mr. Hodder and Mr. Lisson each made brief opening statements. The worker gave evidence under oath. At the conclusion of the hearing, the two representatives each made closing submissions.

THE NATURE OF THE CASE

On February 18, 1991, the worker was hit in the face by a lifting hook attached to a 50 ton crane. He was thrown about six feet by the force of the blow, and landed on his back. He suffered terrible facial injuries which required hospitalization, replacement of blood, and two operations. He spent about ten months convalescing. Following his return to work, he began to experience pain in his neck and lower back.

The worker is claiming that his neck and back injuries were caused by whiplash and the trauma of the accident. The Board denied the worker's request for health care on the basis that the neck and back injuries did not develop within a reasonable time following the accident.

The worker has appealed to the Tribunal.

THE PANEL'S REASONS**(i) Background**

The worker testified that he had never had medical attention for neck or back pain before the accident of February 18, 1991. His family doctor was Dr. R. James. The worker stated that Dr. James had treated him for about six years, but never for a neck or back problem.

The worker described for the Panel the accident that happened on February 18, 1991. He was working for the accident employer as a welder. He was making a lift with a two chain bridle on a 50 ton crane. He signaled the crane operator to lift slowly. The operator lifted fast. The hook caught. The chain snapped and the hook hit him in the face. The force of the blow threw him about six feet backward and knocked him unconscious, briefly.

According to the medical records in the file, the worker was taken to hospital in the company's ambulance. His nose had been "massively crushed", lacerated, partially amputated, and the distal segment of his nose was moderately depressed into his scalp. There was a deep laceration into his right cheek. The worker's right eye was swollen shut, was hemorrhaging internally, and the vision from that eye was blurred for many months after the accident. There were also multiple fractures of the bones in the worker's face.

The worker recovered quickly after his initial surgery and was discharged from the hospital on February 21, 1991. The medical records show that worker suffered headaches for several months after the accident. He had difficulty clearing the right side of his nose and had decreased sensation on the nose, right cheek, and upper lip.

He had a septorhinoplasty with cartilage grafts to the right nasal wall and nasal dorsum, on October 23, 1991.

The worker testified that during his convalescence, he took Tylenol #3 for his pain. He stated that he did not suffer any injury to his neck or back between his industrial accident and his return to work. He was not involved in any sports during this period, nor was he in a motor vehicle accident. He said that his neck and back ached during his convalescence but his attention was focused on his face.

According to his testimony, when the worker returned to his regular employment as a welder, he became aware of the problems with his neck and back. He said that he initially expected the aches to heal with time. When they did not, he went to his family doctor who referred him to a chiropractor. He stated that his family doctor related his back and neck pain directly to the accident. Similarly, when he discussed the mechanics of his injury with the chiropractor, the chiropractor also said the problems were definitely related to the accident.

The worker described the pain as starting behind his skull, going over his shoulder and down his left arm. He stated that it is there all the time. He said it hurts to tilt his head back. In addition, lifting bothers his lower back.

The worker is no longer taking any medication for pain, but is controlling it by seeing the chiropractor every two weeks for manipulation.

In response to a question from a Panel member, the worker stated that he had never had x-rays before his industrial accident. After the accident, he had a CAT scan of his skull, which revealed the broken eye socket. The CAT scan did not involve the neck or shoulder area.

(ii) The medical evidence

There is no dispute about the severity of the injuries the worker suffered to his face, so we will not review that medical evidence.

The first mention of a problem with the worker's neck and back is found in a letter dated March 11, 1992, from Dr. James to the Board. Dr. James said:

Obviously, the major concern was his face and the results of plastic surgery have been very good in this respect. Lost in the worries about the face have been any other injuries related to this accident.

Today, I saw him for two problems relating to his back, both of which I feel to be related to the WCB injury.

The first of these is a cervical spine discomfort and pain. This is centrally located, in the C 4-5 region, and does cause some pain on extremes of movement. As well, he has pain in the lower back, and the left sacroiliac joint. This does restrict his movements somewhat, especially in extension [sic], and in right lateral flexion.

As I stated, these have been there for some time, but have been passed over because of the more serious nature of the facial injuries.

The worker saw Dr. J. MacRae on March 31, 1992. Dr. MacRae reported that the worker had some radicular radiation into the left anterior thigh. He also reported that the work as a welder increased the worker's back pain, as did driving his car.

Dr. MacRae x-rayed the worker's spine. He stated that the x-ray showed spondylosis of the lower segments of the cervical spine and an old compression-type injury of T11 and T12.

On May 6, 1992, Dr. James wrote a letter "To whom it may concern". In his letter, he reported that the worker was complaining of low back and neck pain in 1991 and that these pains were alleviated somewhat by the chiropractic treatment he was now receiving.

As a result of the medical information submitted by Dr. James and by Dr. MacRae, the file was reviewed by Dr. N. Preradovic, the Regional Medical Advisor. Dr. Preradovic stated:

The proven development of the neck, upper back and low back problem has occurred so belatedly that I cannot see it as compatible. The family physician in his letters states that these injuries have been overlooked because of the more serious injuries to the head which absorbed all the attention of the treating physicians. That I can fully understand during the acute phase which may last for 2-3 months. This becomes less understandable, though, later. I do not believe that this worker complained practically for almost a year of the low back and neck problem and that the family physician hasn't done anything along the line of investigation (i.e.: even a simple x-ray), or hasn't even attempted to treat it in one way or another. The total absence of any investigational and therapeutic activity would not go hand in hand with a serious neck and back problem for practically a full year. That would then suggest that the actual development of those problems can be placed time-wise in March 1992 (i.e.: practically 13 months after this accident). Noting the old fracture of the T11 and T12, this man has a pre-existing condition which could have caused him pain in those areas. As far as the exact nature of this problem, I can see the chiropractor diagnosis which I am not able to comment on: because for some portions of it, I have never heard of in 30 years of being a physician.

In summary, although the type of the compensable injury is such that this worker could have developed problem with the neck and low back, the development of the pain in those areas so belatedly after the accident does not appear to be compatible with it.

As a result of Dr. Preradovic's opinion, the worker's claim was denied by the adjudicator. Dr. MacRae wrote the adjudicator on July 21, 1992. In his letter he made the following two points.

1. The crane hook which struck his face did much more than cause him to "sustain a laceration and contusion to his face." The weight of the hook was significant and imparted heavy impact and fracturing to the skull which also caused spraining in the upper cervical spine along with vertebral displacement. Naturally his major concern after the accident was reconstructive surgery to his face. It became evident on his return to work Dec. 1, 1991 that his neck did not function properly. He suffers daily suboccipital pain, stiffness, vertigo and headaches all of which he did not suffer from prior to the accident.
2. The injury to the lumbo-sacral spine is more difficult to directly relate to the impact although it is not unreasonable to project the whole body being pivoted about with such a heavy object as a crane hook striking his skull. Significant is the fact that he had no

prior pain or history thereof in this area before the injury. The lumbar pain and radiculitis was [sic] only experienced on his return to work and has persisted since then. His family physician has been treating these complaints on an ongoing basis and referred him to our office for further evaluation and treatment.

Dr. James wrote the Board again on August 12, 1992. He described the worker's accident in some detail and concluded that the force of the crane hitting the worker's face would have been sufficient to produce a whiplash injury to his neck and lower back. He stated that the worker's life was at stake when he was initially treated. Then the concern was for the proper functioning of the worker's nose and eye. Only after these injuries began to resolve, did his neck and back pain become apparent.

After receiving the above letters from Dr. James and Dr. MacRae, the adjudicator again referred the file for a medical opinion. Dr. J. Haynes, Regional Medical Advisor, provided an opinion on August 24, 1992. He agreed with Dr. Preradovic's previous opinion. He concluded: "There is no reason, medically, to accept the neck and back problem as in any way related to the compensable injury."

After the Hearings Officer Hearing, the Hearings Officer wrote Dr. James asking for the date and history of first complaint of neck and back symptoms by the injured worker. He also asked for the dates of treatment and Dr. James' diagnosis for both the neck and back pain.

Dr. James responded that the worker first mentioned neck and back pain on December 11, 1991, following his return to heavy physical labor on December 1, 1991.

In preparing for this hearing, Mr. Hodder wrote Dr. MacRae and asked him to respond to the opinions expressed by Drs. Preradovic and Haynes. Dr. MacRae responded:

1. This man sustained a major impact to his face and skull - the physical force necessary to do the damage found, would have to have had an injurious effect on his neck and most probably the lower back. After all the man was struck with sufficient force to throw him on to the work area floor some distance and dislodge part of his face.
2. He had no previous neck or lower spinal problems.
3. These injuries to his face were the foremost concern post-accident plus he was not working to cause continued stress on his neck or lower back. This is reason to explain why these musculoskeletal injuries did not become his major concern until he returned [to] his job as an industrial mechanic [sic].
4. The radiological findings in the neck, being that of mild or early degeneration and spinal displacements are

totally possible to have occurred at the time of the accident and are now visible on film. The reported radiological findings in the lower back certainly preceded this injury. The ramification however of a severe torsion injury to the body would not in any way do anything but further aggravate the lower spine.

Dr. MacRae concluded with the opinion that the worker would need supportive spinal care for the rest of his working career if not his life. It was his opinion that chiropractic care was most appropriate and should be available at approximately two week intervals.

(iii) The worker's representative's submissions

Mr. Hodder impressed on the Panel the seriousness of the worker's initial injury and the fact that the primary focus at the time of the accident was his facial damage and the necessary reconstructive surgery. Mr. Hodder pointed to the worker's testimony that he experienced neck and back symptoms during his convalescence but these were not disabling. It was Mr. Hodder's position that the worker did not suffer any other injury that could account for the neck and back problems.

Mr. Hodder drew the Panel's attention to the fact that neither Dr. Preradovic nor Dr. Haynes examined the worker or knew anything about his personal history. Despite that, Dr. Preradovic felt the symptomatology was consistent with the accident but was concerned about the length of time that elapsed before the symptoms became apparent.

Mr. Hodder urged us to accept the opinions of Dr. James who had been his personal physician for six years, and Dr. MacRae who was now treating his neck and back symptoms with considerable success.

Mr. Hodder stated that the worker has lost no time because of his neck and back pain since his return to work. He said that the chiropractic treatment is enabling him to continue with his employment. He noted that since March 12, 1992, the worker has accrued a bill of \$847.95. He asked this Panel to send a direction to the Board that the maintenance treatment the worker is receiving is part of the claim and is to be continued for as long as necessary.

Mr. Hodder said that the worker has received a Non Economic Loss award as a result of the facial injury. This award would have to be adjusted if entitlement were granted.

Finally, Mr. Hodder said that he believes the medical opinions of Dr. James and Dr. MacRae should outweigh the medical opinions of Dr. Preradovic and Dr. Haynes. However, if we were to decide that the evidence is approximately equal, section 4(4) of the Act ought to be applied and entitlement granted on the benefit of the doubt.

(iv) The employer representative's submissions

Mr. Lisson stated that the worker is a highly valued employee and was an extremely credible witness. He stated that the Panel must be satisfied that

the neck and back injury were caused by, aggravated by, or accelerated by the accident. In making our decision, he asked that we keep in mind the serious nature of the incident.

Mr. Lisson directed us to the report of the medical examination that was conducted when the worker was first taken to hospital. Dr. N. Colterjohn, writing for Dr. D. Ward, stated: "Examination of his neck reveals no evidence of any tenderness of his cervical spine."

Finally, it was Mr. Lisson's submission that the test the Panel ought to apply was one of reasonableness.

(v) The Workers' Compensation Act

Section 4(4) of the Workers' Compensation Act states:

In determining any claim under this Act, the decision shall be made in accordance with the real merits and justice of the case and where it is not practicable to determine and issue because the evidence for or against the issue is approximately equal in weight, the issue shall be resolved in favor of the claimant.

(vi) The Panel's conclusions

The Panel agrees with the observation made by Mr. Lisson: the worker was a credible witness. We accept his testimony that he did not suffer neck or back pain prior to the accident on February 18, 1991, and that he did not suffer any injuries to these areas during his convalescence. We find his testimony that he experienced neck and back aches while he was recovering but did not pay attention to them because of his facial injuries, entirely believable. In addition, we would expect that the prescriptions he was taking for the pain in his face would mask his neck and back pain.

We also accept the worker's explanation that his neck and back became worse after he began his regular duties.

We further accept the opinions of the worker's health care practitioners, Dr. James and Dr. MacRae, that the neck and back injuries are directly related to his compensable accident. We are supported in this by Dr. Preradovic's opinion that the neck and back injuries are compatible with the nature and extent of the worker's accident. It will be remembered that Dr. Preradovic was concerned about the delay in onset of the worker's symptoms. That delay has been explained to our satisfaction.

The Panel is impressed by the fact that the worker is no longer taking medication for pain, he has returned to work and has lost no time due to his neck and back problems.

With respect to Dr. Ward's finding that there was no evidence of tenderness in his cervical spine immediately after the accident, the Panel is of the view that this finding is entirely consistent with a whiplash injury. Therefore, the finding does not weaken the worker's claim.

The Workers' Compensation Act requires that the decision be made on the true merits and justice of the case. Additionally, the Worker's Compensation Act requires that the benefit of any doubt be extended to the worker. The Panel has applied these principles and find that the worker's appeal ought to be allowed.

THE DECISION

The worker's appeal is allowed. The Board is instructed to pay the outstanding chiropractor's bill; to allow the worker continuing chiropractic care; and to calculate the worker's Non-Economic Award.

DATED at Toronto, this 28th day of September, 1994.

SIGNED: S.J. Sutherland, S.L. Chapman, M. Robillard.