

CLAIM HISTORY AND APPEAL PROCEEDINGS:

The Worker injured his back and neck on June 26, 1987. He was subsequently awarded a 50 percent permanent medical impairment ["PMI"] rating.

In 2005, the Board reviewed the Worker's claim and assessed his eligibility for benefits in relation to chronic pain. In a decision dated September 15, 2005, a Board Case Manager determined that the Worker did not suffer from chronic pain, as that condition is defined in the *Workers' Compensation Act* S.N.S. 1994-95, c.10, as amended [the "Act"]. As a result of that finding, the Worker was not entitled to additional benefits. The Worker appealed to a Hearing Officer who, in a decision dated December 14, 2005, confirmed the earlier decision. The Worker appealed to this Tribunal.

This appeal proceeded by way of paper review. The Worker's representative filed written submissions dated April 3, 2006. On April 18, 2006, the Worker's representative filed a medical report from Dr. Kent Cadegan dated April 12, 2006, and on April 20, 2006, the Tribunal received additional medical documentation from the Worker's representative. This information consisted of Dr. Cadegan's file notes in relation to the Worker. This material was provided to the Board and the Employer, neither of whom filed submissions in relation to this appeal.

ISSUES AND OUTCOMES:

Does the Worker suffer from chronic pain as that condition is defined in s.10A of the *Act*?

Yes, the Worker suffers from chronic pain related to his workplace injury. The Board is to assess his entitlement to benefits.

ANALYSIS:

The legislation applicable to this appeal is the *Act*. In weighing the evidence, I have considered s.187 of the *Act* which provides that, where there is doubt on an issue and the possibilities are evenly balanced, the issue shall be decided in favour of the Worker.

Chronic pain is defined in s.10A of the *Act* as pain continuing beyond the normal recovery time for an injury, or pain that is disproportionate to the amount of pain usually associated with an injury. Conditions such as chronic pain syndrome, fibromyalgia and myofascial pain syndrome are automatically considered to be chronic pain; however, it does not include

pain that is supported by significant objective findings at the sight of an injury which indicate that the injury has not healed.

The Worker was assessed on December 27, 2000, to determine his level of impairment. The examining Board Medical Advisor estimated his impairment level at 20 percent, noting the existence of neurological problems in the Worker's right arm and hand which he attributed to nerve root pressure.

As a result of Tribunal *Decision 2003-51-AD* (June 23, 2003), the Worker's PMI rating was increased to 50 percent. This rating took into account significant objective findings upon examination, which included spinal cord damage and a herniated disc. In reaching this determination, the Tribunal relied upon an October 16, 2002, report from Dr. Leckey, a neurologist, who treated the Worker on several occasions. In his report, Dr. Leckey noted that the Worker continued to complain of pain, and that his MRI showed significant disc herniation with impingement of the spinal cord and permanent changes in his spinal cord. Doctor Leckey attributed the Worker's symptoms to his cervical disc injury, noting that the permanent changes in his spinal cord caused myelomalacia and chronic pain in his left leg.

The Worker seeks a finding that he is entitled to a pain related impairment ["PRI"] award for chronic pain in addition to his 50 percent PMI award.

In an Opinion dated October 13, 2005, a Board Medical Advisor stated that there were significant objective physical findings to explain the Worker's pain, and that his pain did not extend beyond the normal healing time for his injury. The objective findings noted by the Medical Advisor included degenerative disc disease and extensive spinal stenosis.

In support of his claim, the Worker relies upon recent medical reports from Dr. Leckey and Dr. Cadegan, both of whom provided reports after the Hearing Officer's December 14, 2005, decision.

In his January 5, 2006 report, Dr. Leckey stated the following:

Certainly the [Worker] is in a bit of the mess with regards to the pain. He has significant symptoms of spinal cord deafferentation and significant dysregulation of the blood vessels in his feet with a significant dependent rubor which I don't think is on a vascular basis, I think it is more related to a spinal cord dysfunction.

Doctor Leckey then expressed the opinion that the Worker had a "marked degree of pain secondary to the deafferentation from a spinal cord *out of keeping with the degree of abnormality*". (emphasis added)

Similarly, in his April 12, 2006 report, Dr. Cadegan provided the following opinion:

The Worker] suffers chronic pain terribly. His life is illness focused. His every waking hour is disturbed with a host and variety of pains related to multiple injuries, chronic pain sequelae, myofascial pain, and multiple trigger points. He has several serious injuries that have been adequately compensated from which he suffers. In addition to this, he has all of the criteria of the chronic pain definition. It's persistent and continuous, certainly beyond normal recovery time. It was triggered by the injury. It is disproportionate to any other injuries. It has many of the features of fibromyalgia and myofascial pain.

Having regard to s. 187 of the *Act*, I accept the opinions of Drs. Leckey and Cadegan that the Worker suffers from chronic pain, as that condition is defined in the *Act*. Both have treated the Worker regularly, and I find that they are in a better position than the Board Medical Advisor to provide an assessment of his condition.

Although the Worker has a significant PMI award in relation to his painful spinal cord injury, both Drs. Leckey and Cadegan have also indicated that there is a chronic pain component to his condition. They have both expressed the opinion that the Worker's pain is disproportionate to his injury, and Dr. Cadegan has also stated that the Worker's condition has many features of fibromyalgia and myofascial pain. Both are essentially saying that, although the Worker suffers from significant pain that can be explained by objective physical findings, the intensity of his pain is greater than what one would normally expect from that type of injury. His condition therefore meets the statutory definition of chronic pain.

CONCLUSION:

The appeal is allowed. The Worker suffers from chronic pain as that condition is defined in the *Act*. The Board is to determine his entitlement to benefits.