

CLAIM HISTORY AND APPEAL PROCEEDINGS:

The Worker appealed a decision by a Board Hearing Officer dated November 17, 2006. The *Workers' Compensation Act*, S.N.S. 1994-95, c. 10, as amended (the "Act"), applies to this appeal.

On November 26, 1993, the Worker injured his right shoulder on the job. He underwent a surgical repair, but unfortunately he was unable to achieve a good recovery. He has been left with pain, loss of strength and limitations of movement in his shoulder. Subsequent to his surgery, he used prescription analgesics as well as street drugs. These drugs included Percocet, a narcotic.

The Worker's treating family physician, Dr. J. Dorar, advised the Board that Methadone (a narcotic) was prescribed for the Worker's pain and to manage his addiction to percocet. The Worker seeks medical aid (MA) assistance from the Board. He claims entitlement to the cost of Methadone.

However, a Board Case Manager denied the Worker's claim for MA assistance on September 12, 2006. She found that Methadone was neither necessary or expedient as a result of the Worker's compensable shoulder injury and is not a generally accepted treatment in the healthcare community for a shoulder injury. The Hearing Officer denied the Worker's appeal for the same reasons.

This matter proceeded by way of written submissions from the Worker's representative and a review of the Worker's Board's file. No submissions were tendered by the Employer or the Board.

ISSUE AND OUTCOME:

Is the Worker entitled to medical aid in the form of reimbursement for the cost of Methadone?

No. Methadone is helpful in the management of the Worker's addiction to narcotics. It is not an appropriate treatment for his shoulder injury. The Worker's history of Percocet drug use involves street drugs. There is insufficient evidence to find a required causal connection between his Percocet addiction and his compensable shoulder injury. In the absence of a causal connection to the shoulder injury, the Worker is not entitled to an award for such medication.

ANALYSIS:*Medical History:*

This decision contains personal information and may be published. For this reason, I have not referred to the participants by name.

The Worker's representative submitted that the Worker's narcotic addiction is causally linked to his compensable injury. Therefore, a brief review of relevant medical evidence is necessary.

According to a May 11, 1994 report from Dr. G. Reardon, orthopaedic surgeon, the Worker suffered shoulder instability following a dislocation injury. It was described as "a large Hill-Sach's deformity which is a compression defect in the humeral head". The bone had apparently "banged up against the anterior edge of the glenoid causing the compression." The problem with the lesion is that there was a propensity for the humeral head to "flip out" when externally rotated. In addition, the Worker had a significant injury to the anterior glenoid labrum or cartilage.

Dr. Reardon performed surgery to correct the problem on March 23, 1995, but the surgery was not entirely successful. According to Dr. Reardon's August 24, 1995 report, the Worker's range of motion was quite restricted. He also complained of a lot of pain and stiffness. However, Dr. Reardon could find no obvious neurological defect. In a June 17, 1999 report, Dr. Reardon described the Worker as having increased pain and some numbness in the shoulder and arm area. Dr. Reardon anecdotally noted the Worker had problems with some analgesic addiction, but "He is now receiving counselling [*sic*] and seems to have this under control."

Much of the Worker's history of drug addiction was summarized in a prior Tribunal decision, *Decision 2003-582-AD* (March 29, 2004, NSWCA T). *Decision 2003-582-AD* concerned the Worker's request for Diazepam. The Appeal Commissioner in that decision wrote:

A review of the medical evidence reveals that as early as September 2002, the Worker's family physician, Dr. J.A. Roach, had prescribed Diazepam (under the brand name Valium) for the Worker. In a report dated September 5, 2002, Dr. Roach indicated that Valium had been prescribed as a substitute for the "heavy analgesics" which the Worker had been prescribed for his compensable shoulder injury. In a subsequent report dated October 23, 2002, Dr. Roach indicated that the Worker had been taking narcotics (which he had purchased on the street) for his injuries, and that after he had been treated at detox, he was prescribed Valium in place of analgesics.

In a report dated October 31, 2002, the Worker's treating psychologist [*sic*], Dr. Roxburgh, noted that the Worker had become addicted to the prescription drug Fiorinal, which he had been taking as a result of his compensable injury. Regarding the Worker's use of Diazepam, Dr. Roxburgh noted the following:

In fact, I discussed with [the Worker] today that in view of his problems with addictions, we should gradually wean him off his Diazepam. However, given [the Worker's] history and difficulty

coping on a day to day basis, particularly in the context of recurrent separations from his wife and family, that this should only be tackled in small increments. . . .

It was suggested by Dr. Roxburgh, a psychiatrist, that the Worker's anxiety and emotional state leading to his addiction was directly related to his physical injury. This suggestion was disputed by a Board Medical Advisor in a Medical Opinion quoted in *Decision 2003-582-AD*. The Medical Advisor, citing Dr. Roxburgh's own report, noted that the Worker had

'[S]erious limitations, both educationally and emotionally'. There is also a reference in the clinic notes of October 31, 2002 of the loss of his brother and frequent separations from his wife and family."

Dr. Roxburgh's May 17, 2001 letter to the Board says much the same thing. It also notes the Worker's anxiety, bleak vocational future and "limited grasp" of his treatment.

Although the Appeal Commissioner in *Decision 2003-582-AD* accepted that the Worker developed an addiction problem as a result of his repeated use of medications following his compensable injury, she rejected the notion that the Worker required continued use of Diazepam. In support, it was noted that Dr. Roxburgh recommended weaning the Worker off the drug and a lack of further opinion evidence favouring the use of the drug.

On August 14, 2006, the Case Manager requested a further medical opinion from a Board physician. She wanted to know, aside from the Worker's addiction, if Methadone would be an appropriate drug to use in the management of shoulder pain. She also noted that there was no information on file to indicate the Worker was ever prescribed Percocet. She only found file information indicating the Worker was prescribed Tylenol 3.

Two Board physicians responded to her request. The first, Dr. T. Dobson, advised that Methadone is used mainly for addictions, not for shoulder pain. The second, Dr. J. Marche, wrote:

Methadone can sometimes be prescribed for the treatment of neuropathic pain. In this case it is clearly being used for the treatment of narcotic addiction.

The Act and Board Policy:

I must view the evidence before me in light of s. 187 of the *Act*. The Worker is entitled to the benefit of the doubt on any issue involving compensation. If there is doubt on a compensation issue and the disputed possibilities are evenly balanced, the issue should be resolved in the Worker's favour. Any participant disputing an inference raised by the Worker is required to meet a greater burden of proof, the balance of probabilities standard generally required in civil matters. Whether an inference is reasonable depends upon the circumstances of each case.

The Worker seeks a form of medical aid from the Board. Medical aid is a discretionary benefit that may be awarded to a worker pursuant to ss. 102-111 of the *Act*. The medical aid must be “necessary or expedient” and causally related to a compensable injury. I adopt the reasons of *Decision 98-041-AD* (July 15, 1998, NSWCAT) with respect to the meaning of these terms. In my opinion, ‘necessary’ includes something essential or indispensable and ‘expedient’ includes that which is advantageous, advisable or appropriate.

Section 2(r) of the *Act* provides, in part, that “any health care service, product or device” may be authorized by the Board “as a result of a compensable injury”. Policy Statement 1, Board Policy 2.3.1R, provides that assistance is to be appropriate for the type of compensable injury and is to be consistent with standards of health care practices in Canada. The Board is not to pay for health care not determined to be appropriate.

While awarding medical aid lies within the discretion of the Board under s. 104 of the *Act*, this Tribunal may exercise the Board’s discretion in an appeal where the aid in question meets the required criteria. *cf.*, *MacLeod v. Workers’ Compensation Board (N.S.), et al.* (1998), 168 N.S.R. (2d) 399 (C.A.).

There is a question in this case with respect to the causal connection between the Worker’s injury and need for MA. Although a causal relationship must be shown, a worker is not required to prove causation to a scientific certainty. Common sense may be used to infer causation where appropriate. *Workers’ Compensation Board (N.S.) v. Workers’ Compensation Appeals Tribunal (N.S.) and Johnstone* (1999), 181 N.S.R. (2d) 247 (C.A.).

Not Entitled to Medical Aid:

As provided by s. 252 of the *Act*, I am not permitted to reconsider, rescind, alter, amend or supplement a prior decision of the Tribunal. Thus, *Decision 2003-582-AD* is binding upon me. However, although my colleague found the Worker developed an addiction problem following his compensable injury, this finding was not necessary to her decision. Furthermore, she did not specifically find that the Worker’s use of narcotics was causally related to his compensable injury.

The evidence from Dr. Roach indicates that the Worker obtained narcotic medication (e.g., Percocet) from “the street”, not by way of prescriptions from a physician. There was no evidence the Board sponsored the use of Percocet. It also appears that the Worker’s use of narcotic medication took place despite interventions from his treating physicians. In 1999, Dr. Reardon thought the Worker had controlled his drug addiction problem. In 2001, the Worker was directed by his doctors to wean himself from certain medication and more benign medication was substituted in its place.

There is also evidence to suggest the Worker had other significant factors in his life that influenced him to use narcotic drugs. Dr. Roxburgh wrote that the Worker was limited educationally and emotionally. He also suffered the loss of a loved one and went through recurrent separations from his wife.

Given the foregoing, I find that the Worker did not satisfy his burden of proof to show that his addiction to Percocet was causally related to his compensable injury. In my view, it is speculative to attribute Percocet addiction, a drug his doctors apparently did not prescribe for his shoulder, to the compensable injury.

In addition, I prefer the opinion evidence from Drs. Dobson and Marche that Methadone is not an appropriate drug to use for the Worker's shoulder condition. Their evidence is more specific than Dr. Dorar's evidence on this point. While Methadone may be helpful for neuropathic pain, there is no indication the Worker suffers from this problem. To the contrary, his injury involved a shoulder dislocation with a compression defect or lesion and subsequent instability. No neurological defect was noted. Therefore, I find that Methadone is not a necessary or expedient medication with respect to the Worker's shoulder condition.

Since Methadone is not appropriate for the Worker's shoulder problems and there is insufficient evidence to relate his use of Percocet to his compensable injury, I conclude that the Worker is not entitled to MA in the form of Methadone treatments. It follows that he is not entitled to an award for the cost of such medication and his appeal must be denied.

CONCLUSION:

The appeal is denied. Methadone is not an appropriate drug for the Worker's shoulder problems. Additionally, there is insufficient evidence to relate the Worker's use of Percocet to the September 1993 compensable shoulder injury.