

CLAIM HISTORY AND APPEAL PROCEEDINGS:

The Worker, a driver by trade, had workplace injuries to his left shoulder on December 29, 1988 and on November 20, 1989. Despite an attempt at surgical rotator cuff repair, and repeat arcomioplasties, the Worker has been left with limitations and pain.

The Board has accepted the Worker's claims, and found him to have a 20% permanent medical impairment rating for his shoulder injuries. The Worker sought compensation under the recent *Chronic Pain Regulations*. This led to the following two decisions:

- TST Decision (February 22, 2006) - The decision found that the Worker's pain was not "chronic pain" as the existence and degree of the pain was explained by significant objective findings in the left shoulder region. The decision also commented on the lack of current medical information regarding the pain.

- Hearing Officer's Decision (May 26, 2006) - The decision confirmed the finding of the TST decision.

My decision addresses the Worker's appeal of the Hearing Officer's decision. His representative agrees that some of the Worker's pain is not "chronic pain" as it is explained by objective findings in the left shoulder region. However, he argues that there is also "chronic pain" as the objective findings do not explain all of the pain - in other words, that the pain is disproportionate to the objective findings.

ISSUES AND OUTCOMES:

Did the Worker's injuries cause him to develop chronic pain?

No. While the Worker has severe ongoing pain due to his injuries, that pain is not a chronic pain syndrome. The degree of the pain is explained by his huge rotator cuff tear.

ANALYSIS:

"Chronic pain" is defined in the *Chronic Pain Regulations* 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 site of the injury which indicate that the injury has not healed.

So, “chronic pain” under the *Chronic Pain Regulations* is pain that is both chronic and unusual for an injury.

There is no evidence before me suggesting a cause for the pain other than the injuries. So, the causal connection between the pain and the injury is not in dispute. Also, there is no evidence to suggest that the pain has not been chronic, in the sense of being ongoing. So, I must look at whether the pain is unusual for the injury.

On August 24, 1994, Dr. Dobson, Board physician, expressed the view that people usually recover from failed rotator cuff surgery within 3 to 4 months. So, it appears that the Worker’s pain has lasted beyond the normal recovery time. Based on Dr. Dobson’s opinion, the Worker’s pain might be chronic pain. Also, on June 26, 2006, Dr. Ryan, family physician, expressed the view that the Worker had a chronic pain syndrome. Based on Dr. Ryan’s evidence, the Worker’s pain might be chronic pain.

I must decide whether I accept Dr. Ryan’s opinion that the Worker has a chronic pain syndrome.

Also, the definition of “chronic pain” excludes pain explained by significant, objective findings at the site of injury. If I find that the pain is explained by significant, objective findings, it is not “chronic pain”, even if it lasts beyond the normal recovery period. So, I must decide whether the pain is explained by the significant objective findings.

In doing so, under s. 187 of the *Workers’ Compensation Act*, I must give the Worker the benefit of the doubt. This means that if the disputed possibilities on an issue are even, the issue must be decided in the Worker’s favour.

On May 2, 1994, Dr. Reardon, orthopaedic surgeon, examined the Worker. He stated that it was obvious that the rotator cuff repair had failed. He stated this was common. He stated that he would explore whether it could be repaired. If not, he stated that the Worker would be left with a significant deficit.

On August 8, 1994, Dr. Reardon did a surgical examination of the Worker’s rotator cuff. He stated that there was a large gaping tear in the rotator cuff that could not be repaired. He debrided the rotator cuff in hope that there might be some symptom relief.

On September 21, 1994, Dr. Reardon again examined the Worker. He described the previous repair as “absolutely huge”.

On November 2, 1994, Dr. Reardon again examined the Worker. He stated that the debridement did not bring symptom relief. He stated that the Worker has a very serious

shoulder problem that cannot be fixed. He stated that the Worker would lose significant function of his left shoulder. He stated that the problem was serious enough that the Worker could not return to the workforce.

On May 5, 1995, Dr. Smith, Board physician, examined the Worker. He stated that the Worker had very little movement in his shoulder due to pain. He recommended increasing the Worker's permanent medical impairment rating from 14% to 20%.

On January 16, 2006, Dr. Shaw, Board physician, reviewed the Worker's file. He stated that the Worker's pain was due to a rotator cuff problem that had not healed properly. He stated that any movement beyond a certain range of motion produces pain. He stated that the degree of the Worker's pain was what was expected due to his injury. It was his view that the Worker did not have a pain-related impairment as the pain was due to the permanent medical impairment.

On June 26, 2006, Dr. Ryan, the Worker's family physician, wrote that the Worker had a failed rotator cuff repair. He stated that "Since this time he has had continued pain in his left shoulder which is chronic pain syndrome."

The Worker's representative refers to the AMA guides in his submissions. At page 567 the AMA guides state that the term "chronic pain syndrome" is often used to describe an individual who is markedly impaired by chronic pain with substantial psychological overlay. It states that this is best understood as an abnormal illness behaviour that consists mainly of an excessive adoption of the sick role. At page 568, the AMA guides state:

Physicians differ sharply in the way in which they conceptualize the relations among biological insult, measurable organ or body part dysfunction, and self-reported activity limitations in individuals with chronic pain. Some physicians have a low threshold for using diagnoses like "chronic pain syndrome" or "psychogenic pain" to describe these people. The diagnoses highlight the lack of association between the complaints of the individuals and any well-defined biological abnormality.

It is Dr. Shaw's view that the rotator cuff tear explains the degree of the Worker's pain. Dr. Reardon describes the tear as huge and expressed no surprise at the degree of the Worker's pain in his reports. Dr. Reardon expected the symptoms to be disabling enough to prevent a return to work. I find, based on accepting these opinions, that the Worker's pain is explained by the rotator cuff tear. Therefore, the Worker's pain is explained by significant objective findings at the site of injury.

In one report, Dr. Ryan describes the Worker as having a chronic pain syndrome. No other doctor has made this observation. The Board physicians did not observe a chronic pain syndrome when the Worker was assessed for his permanent medical impairment ratings.

While Dr. Ryan described pain, he did not describe the Worker as having a substantial psychological overlay. He did not describe the Worker as taking an excessive adoption of the sick role. There is insufficient evidence to accept Dr. Ryan's opinion that the Worker has a chronic pain syndrome. Instead, the Worker has a very painful impairment, but the pain is not unusual for that impairment.

As I have found that the Worker does not have a chronic pain syndrome, and that his pain is explained by objective findings, I find that he does not have chronic pain as defined in the *Chronic Pain Regulations*.

CONCLUSION:

The appeal is denied. The Worker is not entitled to compensation under the *Chronic Pain Regulations*.