

## **CLAIM HISTORY AND APPEAL PROCEEDINGS:**

This is an appeal of a decision of a Hearing Officer of the Board, dated May 26, 2006, in which the Hearing Officer determined that the Worker was not entitled to a Permanent Medical Impairment ["PMI"] rating in relation to bilateral carpal tunnel syndrome. The Worker appealed that decision to the Workers' Compensation Appeals Tribunal [the "Tribunal"] on June 6, 2006. This appeal proceeded by way of oral hearing at which the Worker testified. Also present at the hearing was the Worker's sister.

## **ISSUE AND OUTCOME:**

Does the Worker have a PMI in relation to her bilateral carpal tunnel syndrome?

No. There is insufficient evidence to establish that the Worker's bilateral carpal tunnel syndrome has resulted in a PMI.

## **ANALYSIS:**

The legislation applicable to this appeal is the *Act*. Section 187 of the *Act* requires me to give the worker the benefit of the doubt, which means that if the disputed possibilities are evenly balanced on an issue of compensation, then the issue will be resolved in the Worker's favour.

The Worker developed bilateral carpal tunnel syndrome over a period of time while working with the Employer as a cashier/clerk. The Worker's job duties involved a significant amount of lifting and use of her hands. She underwent a left carpal tunnel release on February 17, 2003, and a right release on July 27, 2004. The Board accepted the Worker's carpal tunnel syndrome as being compensable.

According to a report of Dr. Brien, neurologist, dated August 5, 2004, the Worker's movement from the right release was healing fine, but she was complaining of stiffness and occasional pain around the site of the surgery. She was complaining of some stiffness, numbness, and tingling at the tips of all fingers and a numb sensation in her thumb. Sensation appeared to be intact in the distribution of the median and ulnar nerve. She had some slight weakness, but that was not unexpected considering she just had surgery. She had a normal neurovascular examination of the hand and she could close her fist normally.

According to a report from the Worker's family doctor, Dr. O'Brien, dated September 9, 2004, the Worker still had a very stiff wrist which was quite swollen and tender. He requested that the Board approve a short course of physiotherapy. According to Dr.

O'Brien's report of September 23, 2004, the Worker's symptoms were improving and her prognosis was excellent. Dr. O'Brien's report of September 29, 2004 noted that the Worker's range of motion was not full yet and she was to continue with physiotherapy.

According to a Functional Scan report from the Worker's physiotherapist, strength testing using the Jaymar Dynamometer, revealed an average grip strength of 35 pounds on the left and 6.6 pounds on the right. Compared to normative data, this placed the patient in the tenth percentile for left hand grip and significantly below the tenth percentile for the right. In the physiotherapist's opinion, the Worker was not yet ready to return to work and her current lifting ability placed her in the sedentary job category. Clinically, there was a significant loss of grip strength. According to the physiotherapist's Discharge Summary, dated October 25, 2004, the Worker's grip strength on the right side had increased from 6.6 pounds to 31.5 pounds. The physiotherapist noted that the Worker was functioning well in her ease back program but that she would need to increase her lifting gradually.

Dr. O'Brien reported in his February 14, 2005 report, that the Worker was continuing to have pain in her left hand but there were no objective findings. He diagnosed the Worker with recurring symptoms of carpal tunnel syndrome.

Dr. Leckey, neurologist, reviewed the Worker and provided a report dated May 26, 2005, to Dr. O'Brien. In it he stated that the Worker had significant improvement after her carpal tunnel release but when she overused her hands, particularly at work, she found that she experienced significant difficulty regarding pain and numbness. He noted that she is working at a store with less volume than the store she was working at prior to her carpal tunnel release, and he felt that her carpal tunnel symptoms were, "simply mechanical related to the overuse and, indeed, if all of us used our hands all of the time we would probably have symptoms of carpal tunnel syndrome". Dr. Leckey stated that EMG studies showed that the Worker's carpal tunnel syndrome had improved, however, he noted that EMG studies revealed a very mild carpal tunnel. He did not feel that the Worker's condition warranted further neurologic investigations.

Dr. Leckey provided a report to the Workers' Advisers Program, dated March 21, 2006, based on an examination of the Worker, and updated EMG studies. The Worker was continuing to complain of bilateral hand pain at that time. Dr. Leckey was of the view that the Worker suffered from chronic pain syndrome. He stated that the degree of carpal tunnel abnormality that she had was not significant enough to account for her hand pain. He stated, "She does however, have chronic symptoms involving both her hands, and indeed, based on my understanding, [of] the definition of chronic pain does suffer from chronic pain involving her hands."

The Worker was awarded a 3% Pain Related Impairment["PRI"] rating by the Board on the basis of her chronic pain. She was assessed for a PMI, by Board Medical Advisor, Dr. Orrell, on December 5, 2005. The Worker testified that she was unhappy with the PMI examination given to her by Dr. Orrell. She felt that he had stated that she did not have

carpal tunnel syndrome, when she did indeed have carpal tunnel syndrome.

In reviewing Dr. Orrell's written report of the PMI examination, I see that he refers to the fact that EMG reports on the Worker's wrists were consistent with mild carpal tunnel syndrome bilaterally. Regardless of what was said at the PMI exam, I find that Dr. Orrell did, at least in his written report, acknowledge that the Worker does suffer from carpal tunnel syndrome, however, he found that this injury was not manifesting itself in any impairment.

The Worker feels that she should be entitled, in addition to her PRI, to a PMI as a result of her carpal tunnel syndrome. She is concerned about being transferred to a higher volume store, and having an increase in her symptoms.

According to Board Policy 3.3.2R1 for an injury arising on or after January 1, 2000, the existence and degree of a Worker's PMI is to be assessed under Board Policy 3.3.4. Section 1 of Policy of 3.3.4 states that the American Medical Association's Guides to the Evaluation of Permanent Impairment [the "AMA Guides"] are to be used for such assessments.

Pursuant to s. 9 of Policy 3.3.4, the AMA Guides are used to assess impairment, not disability ("impairment" is defined in Policy 3.3.4 as the loss of, the loss of use of, or derangement of any body part, system or function and "disability" is defined as the decreased capacity or loss of ability of an individual to meet personal, social, or occupational demands) the existence and degree of permanent impairment are determined by medical means and are based solely on a demonstrable loss of bodily function. The type of injury, pain and suffering, age, education or other social factors are not considerations in the evaluation of impairment. Board Medical Advisors are trained in the assessment of permanent impairment and the application of the AMA Guides.

Dr. Orrell's PMI opinion, stated that there was no evidence of muscle wasting in the thenar eminence on either of the Worker's hands. He noted no swelling or colour change on either hand. He stated that range of motion including all digits, wrists and thumb were entirely within normal range. Sensory touch over the hand was unremarkable. Abduction was normal. All other range of motion was within normal limits and unremarkable on observation. Dr. Orrell tested the Worker's strength using the JayMar Dynamometer. He found no evidence of muscle loss and/or loss of range of motion, and stated, "there is nil here to explain weakness or numbness reported by the worker." Presumably he found there was no demonstrable loss of body function. He recommended a 0% whole person impairment.

The Worker's Case Manager requested that Dr. Orrell provide an explanation as to how the zero percentage was determined under the AMA Guides, and what Table he had used. Dr. Orrell in his follow up opinion dated February 14, 2006, replied:

There is no use of a table, the findings are atypical and my opinion is that they are not explainable (sic) with regards to an award for a PMI, this is self explanatory in the PMI assessment and clinically there is no evidence of impairment.

There is no medical opinion evidence before me that the Worker has a PMI or that her assessment by Dr. Orrell was erroneous or inaccurate. Board Medical Advisors have expertise in the evaluation of PMI. Dr. Orrell referenced the AMA Guides, but given his examination findings, which he characterized as “atypical”, he determined that the Worker would not fall to be evaluated under any particular table of the AMA Guides. There is no medical evidence before me to contradict Dr. Orrell’s opinion.

Although the Worker was found not to currently be suffering a PMI as a result of her carpal tunnel syndrome, should there be a decline in her condition in future, she can have updated medical evidence submitted to the Board for its consideration.

**CONCLUSION:**

This appeal is denied. There is insufficient evidence to establish that the Worker has a PMI as a result of her bilateral carpal syndrome.