

CLAIM HISTORY AND APPEAL PROCEEDINGS:

The Worker suffered workplace back injuries in 1981, 1982 and 1984. A discectomy was performed in 1986, and a two-level fusion and nerve root decompression was performed in 1987.

In 1988, the Worker was awarded a 25 percent permanent impairment rating. Following a decision of the Workers' Compensation Appeal Board dated May 19, 1989, the Worker's impairment rating was increased to 35 percent. It was further increased to 50 percent, pursuant to an Appeal Board decision dated March 6, 1991.

In 2006, the Worker sought coverage for medical aid benefits in the form of prescription medication to treat his high blood pressure and elevated cholesterol level. In a decision dated August 25, 2006, a Board Extended Benefits Adjudicator denied the Worker's request for the medication on the basis that the Worker's need for it was not related to his compensable injuries. The Worker appealed to a Hearing Officer who, in a decision dated November 2, 2006, confirmed the earlier finding. The Worker appealed to this Tribunal.

This appeal proceeded by way of written submission. The worker's representative filed written submissions dated February 1, 2007. Attached to the submissions was a medical report from Dr. Craig St. Peters dated January 7, 2007.

ISSUE AND OUTCOME:

Is the Worker entitled to medical aid in the form of blood pressure or cholesterol medication?

No, the Worker is not entitled to medical aid in the form of blood pressure or cholesterol medication. There is insufficient evidence to establish that the Worker's compensable injuries materially contributed to the development of medical conditions requiring these medications.

ANALYSIS:

The legislation applicable to this appeal is the *Workers' Compensation Act*, S.N.S. 1994-95, c.10, as amended [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 resolved in favour of the worker.

Section 102 of the *Act* grants the Board the discretion to provide medical aid that is

considered necessary or expedient as a result of a compensable injury. Section 104 empowers the Board to determine the necessity, character or sufficiency of any medical aid awarded. In order to qualify for benefits, it is necessary for the Worker to establish that his need for medical aid is related to his compensable injury.

The Worker seeks coverage of prescription medication for his high blood pressure and elevated cholesterol level. He submits that his workplace injuries contributed to his development of these conditions.

Causation need not be determined with scientific certainty, and it is appropriate to use common sense to infer causation: *Farrell v. Snell* [1990] 2 S.C.R. 311 and *Athey v. Leonati* (1996), 3 S.C.R. 458. Whether or not any particular inference is reasonable is a question of fact that depends on the circumstances of each case: *Workers Compensation Board (N.S.) v. Johnstone et al.*, 1999 NSCA 164.

The Worker's first back injury occurred on February 20, 1981, when he fell from a winch on a fishing vessel. He injured his back and left shoulder and was off work for approximately two months. The Worker suffered a minor sacroiliac strain in December 1982. His third back injury occurred on February 15, 1984, and the Board provided him with earnings-replacement benefits for approximately six weeks.

The Worker's claim was reopened on February 6, 1986. On February 7, 1986, the Worker underwent a discectomy at the left L5-S1 level. Further surgery in the form of a two-level fusion from L4 to the sacrum and a decompression of the left L5-S1 nerve root was performed on May 15, 1987. Although the surgeries reduced the Worker's back pain, his left leg remained symptomatic. The Worker was left with a residual neurological deficit to his left S1 nerve root and suffers from what is known as a "drop foot".

Following a permanent impairment examination on August 15, 1988, the Worker was awarded a 25 percent rating. By 1991, the Workers' Compensation Appeal Board had increased the Worker's PMI rating increased to 50 percent.

In a Form 8/10 dated July 6, 2006, the Worker's family physician, Dr. St. Peters, stated that the Worker suffered from a previous back injury and foot drop, and was unable to exercise. In noting that the Worker also had high blood pressure and cholesterol, Dr. St. Peters indicated that the Worker "would benefit from exercise - which he can not do therefore he requires Acebutolol and Lipitor".

In an opinion dated August 22, 2006, a Board Medical Advisor stated that the Worker's high blood pressure and cholesterol were not related to his compensable injury. The Medical Advisor provided the following opinion:

Exercise will not treat either hypertension or dyslipidemia. Diet control and medication are the primary forms of management. Relaxation therapy/medication/yoga etc. have also been found to be effective for the

treatment of hypertension. Both conditions have a mainly genetic etiology. In other words, both conditions are related to genetic factors plus life style choices. They are not related to his compensable injury.

In a report dated January 7, 2007, Dr. St. Peters expressed the opinion that the Worker's back injury had an impact on the Worker's need for blood pressure and cholesterol medications. Doctor St. Peters indicated that he was unaware of the Worker suffering from either high blood pressure or cholesterol at the time of his workplace injury. He first assessed the Worker in 2002. At that time, the Worker was taking Acebutolol to control his high blood pressure but was not taking cholesterol medication. Doctor St. Peters noted that his review of the Worker's former family doctor's chart indicated that both the Worker's cholesterol and triglycerides were "in a reasonable range before he came to my office".

Doctor St. Peters further stated that although the Worker's blood glucose levels were in an elevated range prior to 2002, they were not in the range that required treatment other than weight reduction and exercise. Over the past four years, the Worker's blood glucose levels gradually rose to the extent that the Worker has now been diagnosed with diabetes and requires therapy with medications. Doctor St. Peters indicated that when the Worker entered the diabetic range, it was then necessary to lower his cholesterol with medication.

Doctor St. Peters provided the following opinion regarding a link between the Worker's injuries and his need for medication to treat his high blood pressure and cholesterol:

I do feel that his inability to exercise due his back injury, and foot drop have contributed to his excess weight, and subsequent insulin resistance and subsequent development of diabetes. He is now diabetic and requires medication to lower his cholesterol to reduce his risk of diabetic related complications.

Doctor St. Peters further added that the Worker's inability to exercise impacted on his high blood pressure, as he was unable to perform the amount of exercise recommended for the prevention and management of hypertension. He indicated that he did not know if the Worker had hypertension prior to his injury, but if he did not, "...then it is quite possible that his inability to exercise due to his back injury may have caused him to gain more weight which is a risk factor for hypertension".

Doctor St. Peters also expressed the opinion that the medications he prescribed were both necessary and expedient. In particular, he stated that the Worker's need for Lipitor (cholesterol medication), was related to the physical inactivity which caused the Worker to gain excess weight and which, in turn, contributed to his development of diabetes, thereby putting him in a category of patients who required a lower cholesterol level than an average person.

Doctor St. Peters suggested that, but for his back pain and drop foot, the Worker would be able to exercise more intently and possibly would not have gained weight, developed

diabetes, or be required to take cholesterol lowering medication. Doctor St. Peters added that the Worker's excess weight and physical inactivity were contributing factors to his hypertension, and that both factors were affected by the Worker's inability to exercise moderately due to his back injury.

Doctor St. Peters noted that the Worker's diet appeared to be low in cholesterol, sodium and fat, which he identified as being contributors to hypertension and high cholesterol. He also indicated that, "on numerous occasions", he had discussed weight control through diet with the Worker. Doctor St. Peters concluded his report with the following statement:

I think the most important point to consider here is that his back injury does contribute to his inactivity which does contribute to his excess weight, which has contributed to his development of diabetes and the need for lower cholesterol.

Despite having undergone two surgeries, the Worker has been left with a residual neurological deficit to his left SI nerve root.

The medical evidence on file establishes that the Worker has gained weight since his last injury, and that his back symptoms have had a significant impact on the his ability to perform physical activities.

In an opinion dated March 14, 1990, a Board Medical Advisor noted that the Worker had gained approximately 50 pounds since his workplace injury, and therefore required a new back brace.

Doctor Reardon's April 12, 1989 report indicated that the Worker had difficulty walking and performing other physical activity.

In a report dated September 24, 1990 Dr. Heustis noted that the Worker was "grossly overweight" due to his inability to exercise. In a report dated June 29, 1990, Dr. Mahar noted that the Worker had been overweight for years.

Doctor St. Peters has attributed the Worker's need for cholesterol medication to his development of diabetes. Implicit in this determination is a finding that the Worker's diabetes is also related to his workplace injury.

Although I accept Dr. St. Peters opinion that exercise plays a role in the management of high blood pressure, cholesterol and diabetes, I am unable to conclude that the Worker's compensable injuries materially contributed to his development of these conditions.

I accept that the Worker's injuries restricted his ability to exercise, thereby increasing his risk to develop these types of diseases. However, many factors other than weight and exercise play a role in the development of these conditions. As noted by the Board Medical Advisor, genetic predisposition is the main etiology.

Doctor St. Peters has said that it is “possible” that the Worker’s inability to exercise due to his back injury may have caused him to gain weight, thereby increasing his risk factors for the development of these conditions. In my view, mere possibility is insufficient to establish causation in this case. Too many contingencies exist, and I find that the suggestion that the Worker’s injury (leading to weight gain due to an inability to exercise) was a material contributing factor in his development of diabetes, hypertension and high cholesterol is too remote a factor. It is too speculative, which is insufficient to establish causation.

CONCLUSION:

The appeal is denied. There is insufficient evidence to establish that the Worker’s compensable injuries materially contributed to the development of medical conditions requiring medication for high blood pressure and elevated cholesterol levels.