

NOVA SCOTIA WORKERS' COMPENSATION APPEALS TRIBUNAL

Appellant: **[*] (Worker)**

Participants entitled to
respond to this appeal: **J. W. Lindsay Enterprises Limited (Employer) and**

The Workers' Compensation Board of Nova Scotia
(Board)

APPEAL DECISION

Representative: The Worker presented his own case

Form of Appeal: Oral hearing on March 24, 2009 in Windsor, Nova Scotia

WCB Claim No.:

Date of Decision: March 26, 2009

Decision: The appeal of the October 2, 2008 Board Hearing Officer
decision is allowed, according to the reasons of Appeal
Commissioner Gary H. Levine.

CLAIM HISTORY AND APPEAL PROCEEDINGS:

The *Workers' Compensation Act*, S.N.S. 1994-95, c. 10, as amended (the "Act"), applies to this appeal. The Worker* appealed a decision by a Board Hearing Officer dated October 2, 2008 in which his request for medical aid assistance in the form of dental treatments was denied.

The Worker suffered a lower back injury on July 13, 1996 resulting in a permanent impairment and chronic low back pain. The Board recognized his injury for purposes of compensation under the *Act*. He was awarded compensation including a 17 percent permanent medical impairment (PMI) rating for his lower back injury and a 6 percent (substantial) pain-related impairment (PRI) for his chronic pain condition.

The Worker's treating dentist, Dr. E. A. Pirie, submitted a letter dated February 25, 2008 on behalf of the Worker. He stated that the Worker suffers from severe bruxism, or grinding of teeth, following the 1996 back injury. Dr. Pirie recommended dental work be undertaken. Suggested dental work includes crowns for severely worn teeth, partial dentures and root canals. Without such treatments, Dr. Pirie felt the teeth would most likely be lost to attrition.

Based primarily upon an opinion from a Board Dental Consultant, Dr. W. O. Adams, the Board denied the Worker's claim. In a May 23, 2008 decision, a Case Manager found that there was insufficient evidence the Worker's need for dental treatments was causally connected to his compensable back injury and associated pain. The Hearing Officer reached the same conclusion.

The Worker appealed to the Tribunal. I conducted an oral hearing at which the Worker testified under oath. I also considered the decision under appeal and the contents of the Worker's Board file. While all the evidence before me was considered, I will only refer to a portion of the relevant evidence below.

ISSUE AND OUTCOME:

Are the Worker's dental problems causally related, at least in part, to his July 13, 1996 compensable injury? If so, is he entitled to medical aid in the form of dental treatments?

Yes. Giving the Worker the benefit of the doubt, there is sufficient evidence to find that his dental problems, including loss of vertical tooth height and structure from grinding/clenching his teeth, were substantially related to the pain and other symptoms he

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

experienced secondary to his compensable back injury. Therefore, the Worker is entitled to consideration for dental treatments.

ANALYSIS:

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 or compensation that may be awarded to a worker pursuant to ss. 102 -111 of the *Act*. The medical aid sought 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.

Although a causal relationship linking an injury to the workplace must be shown, the Worker is not required to prove causation to a scientific certainty. A causal link between an injury and a subsequently diagnosed condition may be found where it is shown that "but for" a workplace injury, a worker would not have developed the condition. Alternatively, if the "but for" test cannot be applied, a required causal link may be found where an injury is a material contributing factor to a condition; i.e., the injury contributed more than an insignificant or trifling amount to the existence of the condition. I may use common sense to infer causation where appropriate.

Section 2(r) of the *Act* provides, in part, that "any health care service, product or device" may be authorized by the Board and provided to a worker "as a result of a compensable injury". The Board may also reimburse a worker for reasonable expenses to obtain medical aid.

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 applicable criteria. *cf.*, *MacLeod v. Workers' Compensation Board (NS)*, *et al.* (1998), 168 N.S.R. (2d) 399 (C.A.).

Evidence:

The Worker sustained a lower back injury in July 1996 when he pulled up glued carpet from a cement floor. He returned to work for a time, but was unable to carry on with his pre-injury duties. He has had ongoing back pain with radiation of pain down his left leg since his injury. He gets numbness in his left foot and leg, decreased left leg strength and burning sensations in both feet.

In a report dated December 10, 2003, the Worker's family physician, Dr. M. Kazimirski, characterized the Worker's condition as a "chronic disc herniation on the left hand side".

CT scans show pathology at the L4-5 and L5-S1 levels of the Worker's lumbosacral spine. That is, there were findings of a left paracentral disc herniation at the L4-5 level and a calcified disc at the L5-S1 level.

The Worker was assessed by a number of specialists including Dr. I. Mendez, neurosurgeon, Dr. O. Holness, neurosurgeon, Dr. W. Oxner, orthopaedic surgeon and Dr. I Alexander, orthopaedic surgeon. He was also referred for extensive physiotherapy, massage and chiropractic treatment. According to Dr. Kazimirski, the Worker experiences extensive pain, discomfort and debilitation with frequent reoccurrences. Despite all his treatment, his response has been minimal.

In November 2005, the Worker submitted a Client Information Questionnaire to seek chronic pain benefits. A portion of the Questionnaire requests information about sleep habits. The Worker wrote, "I experience a lot of grinding of my teeth while sleeping. I use a retainer. My GP says this is from being in pain constantly."

On October 12, 2007, Dr. Kazimirski submitted a Physician's Report (Form 8/10) to the Board for a visit by the Worker on that day. Dr. Kazimirski noted that the Worker was grinding his teeth due to pain. The report states, "He indeed does have teeth that require surgical attention and grinding in stress as a result of his chronic injuries may be a significant factor."

Two additional 8/10 reports from Dr. Kazimirski, for visits on January 1 and January 21, 2008, referred to complications involving the Worker's teeth in connection with his pain and injury.

The Worker's dentist, Dr. E. A. Pirie, wrote the Board on February 25, 2008. Dr. Pirie wrote:

. . . This patient suffers from severe bruxism. The patient states that he started this parafunction habit after his back injury. He states his ongoing back pain has caused him to clench and grind his teeth. The patient

currently has a night splint however severe damage has occurred and appears to be continuing. The patient has lost a significant amount of vertical dimension and tooth structure. I have recommended the patient crown the severely worn teeth (13, 22, 23, 35, 34, 43, and 44). With his vertical dimension increased then new maxillary and mandibular removable partial dentures could be made. The other alternative to the removable partial dentures would be implants. As there is near pulp exposure on 13, 22, and 23 it may be necessary to root canal treat these teeth, if these teeth become symptomatic. Without treatment to the above mentioned teeth, these teeth will most likely be lost to attrition.

Dr. Pirie enclosed teeth models and a photo for the Board's assistance in evaluating the Worker's claim.

In response, the Board had the Worker's information reviewed by a consulting dentist, Dr. W. O. Adams. In a fax back to the Board on April 25, 2008, Dr. Adams wrote:

The reason for the loss of v. [vertical] dimension & tooth structure is because the lower back teeth have been missing for a long time and he only masticates on his anterior teeth, causing over eruption of maxillary posterior teeth & extensive wear on his remaining teeth.

In addition, the Worker testified at the hearing. He acknowledged having missing back teeth prior to his 1996 back injury. He has a retainer for his teeth. It's his second one and it is wearing through. Apparently, his bite is so strong that he cannot successfully wear a retainer. He said that he did not have the problems he now has in his mouth prior to his back injury. He was adamant that the grinding problem he experiences in his sleep commenced after he was injured. He attributed the grinding and clenching to stress and pain from his injury. Moreover, he testified that all of his teeth are worn, not just the ones in the back of his mouth.

Findings:

Upon consideration, I find that the Worker's difficulties with his teeth are, at least in part, causally related to his 1996 compensable back injury. It makes sense that the Worker's severe, ongoing pain and stress from the injury resulted in him clenching and grinding his teeth. This, in turn, led to severe wear and damage to his teeth as described by Dr. Pirie. I accept the Worker's evidence that he did not have problems in clenching and grinding his teeth prior to the compensable injury. The problem was noted in the 2005 Client Information Questionnaire, Dr. Kazimirski's reports and the letter from the Worker's treating dentist.

As between Dr. Pirie and Dr. Adams, I give greater weight to Dr. Pirie's evidence. Dr.

Pirie's letter documented specific pathology in the Worker's mouth. Dr. Pirie also had the advantage of assessing the Worker personally, presumably, on multiple occasions. I found Dr. Adam's report less specific and he did not have the opportunity to personally examine the Worker.

Having determined there is a causal relationship between damage to the Worker's teeth and the compensable injury, I must consider entitlement to medical aid. In my view, the Worker has met his burden of proof to show that dental treatments are necessary or expedient. If measures are not taken, the Worker is in danger of losing his teeth.

Unfortunately, the Board did not turn its attention to the specific recommendations made by Dr. Pirie. Therefore, the particulars of dental treatment to be provided must be determined by the Board.

CONCLUSION:

The appeal is allowed. The Worker is entitled to medical aid in the form of dental treatment; the particulars of which are to be determined by the Board.

DATED AT HALIFAX, NOVA SCOTIA, this 26th day of March, 2009.

Gary H. Levine
Appeal Commissioner