

DECISION OF THE APPEAL DIVISION

2002-0230

January 28, 2002

RE: Appeal Division Reference #2002-0230

Panel Appointed:
Daphne A. Dukelow

- (1) The worker suffers from atopic eczema. She is a practical nurse employed in a hospital. She developed fissures in her feet from the eczema and the pain these fissures caused forced her to stop work. The worker's claim was disallowed by the entitlement officer. The worker appealed to the Workers' Compensation Review Board (the Review Board). The Review Board denied her appeal and the worker now appeals from the Review Board findings dated September 18, 2001.
- (2) The worker did not request an oral hearing. I am satisfied that this appeal can be determined, on the basis of the claim file, the submission of the worker's representative and the recording of the Review Board hearing, without the necessity of an oral hearing.
- (3) The employer is not participating in this appeal although advised of its right to do so.

Issue(s)

- (4) The issue in this appeal is whether the worker's pre-existing eczema condition on her feet was aggravated by her work activities to the point where she was disabled from working.

Background

- (5) The worker is employed as a practical nurse in a hospital. She works twelve hour shifts. The worker suffers from atopic eczema. The worker made a claim for compensation when she found that the eczema-related fissures she developed in her feet were so painful that she could not work the twelve hour shifts required. The worker's claim was disallowed by the entitlement officer. The worker appealed to the Review Board. The worker now appeals to this panel.

Law and Policy

- (6) This appeal is brought under section 91(1) of the *Workers Compensation Act* (the Act) which permits appeals from Review Board findings to the Appeal Division.

Section 96(3) of the *Act* provides that the appeal division may reopen, rehear and redetermine any matter that has been dealt with by the Review Board.

- (7) Item #26.55 of the *Rehabilitation Services and Claims Manual* (the *Manual*) is the policy which deals with aggravation of a pre-existing disease.

Where a worker has a pre-existing disease which is aggravated by work activities to the point where the worker is thereby disabled, and where such pre-existing disease would not have been disabling in the absence of that work activity, the Board will accept that it was the work activity that rendered the disease disabling and pay compensation. Evidence that the pre-existing disease has been significantly accelerated, activated, or advanced more quickly than would have occurred in the absence of the work activity, is confirmation that a compensable aggravation has resulted from the work.

This must be distinguished from the situation where work activities have the effect of drawing to the attention of the worker the existence of the pre-existing disease without significantly affecting the course of such disease. For example, a worker who experiences hand or arm pain due to an arthritis condition affecting that limb will not be entitled to compensation simply because they experience pain in that limb from performing employment activities. Similarly, a worker with a history of intermittent pain and numbness in a hand/wrist due to a pre-existing median nerve entrapment (carpal tunnel syndrome) will not be entitled to compensation just because their work activities also produce the same symptoms. To be compensable as a work-related aggravation of a disease, the evidence must establish that the employment activated or accelerated the pre-existing disease to the point of disability in circumstances where such disability would not have occurred but for the employment.

An aggravation of a pre-existing disease which is not attributed to a specific event or trauma, or to a series of specific events or traumas, will be treated as a disease.

Analysis

- (8) In my view the first sentence of Item #26.55 of the *Manual* answers the question in this case. The worker is required to walk and stand during much of her twelve hour shifts. This is a work activity. She would not have been disabled to the same extent if she were not engaged in this work activity. It is true that walking and standing are normal everyday activities. However, it is not usual for a person who lives in a city in our

society to stand and walk for much of twelve hours per day on top of the activities of everyday living. The worker's attending physician wrote in a letter dated December 10, 1999 that prolonged periods of walking and standing bring about the fissuring and bleeding of the affected areas. It is the requirement of prolonged walking and standing that aggravated the worker's pre-existing eczema. The letters from the worker's attending physician dated September 28, 1999 and December 10, 1999 make this distinction clear.

- (9) The Board medical advisor initially provided the opinion that the flareup of the eczema was not likely caused by work. The worker and her physician clarified that they were not suggesting the eczema was caused by work. As noted above the worker's attending physician stated that the fissures and pain related to them were aggravated by standing and walking for long periods. The Board medical advisor was asked for a second opinion on this point. The advisor's second opinion deals with interpretation of policy. The advisor stated that there had to be an incident which worsens the condition in order for there to be an aggravation. He stated that the walking and standing were normal activities which would not be expected to cause a problem in a "normal person". This opinion addresses the application of policy to the worker's situation. It does not contradict or respond to the opinion of the worker's attending physician on the effect of walking and standing on the worker's eczema condition and the fissures which resulted from it. For this reason I accept the uncontradicted opinion of the worker's attending physician. The worker's dermatologist did not express an opinion on this matter directly but I find his letters support the attending physician's opinion. The dermatologist confirms that the fissures are related to the worker's eczema.
- (10) The policy set out in the *Manual* does not require there to be an incident which aggravates or accelerates a pre-existing disease or condition. That is one possibility only. The test is not whether the activity would have caused injury to a person not suffering from eczema. There would be no need for the concept of aggravation of a pre-existing disease or condition if that were the case.
- (11) The entitlement officer states that "there has to be some evidence that the work activities would have had the potential to cause an injury or occupational disease in a person without the pre existing condition". I disagree. The test set out in Item #26.55 of the *Manual* is whether the disability would have occurred but for employment, or whether the pre-existing disease would have been disabling in the absence of the work activity. The evidence in my view is that the disease would not have been disabling in the absence of the work activity in the case of this particular worker .
- (12) The Review Board found that the worker's job activities were the same as the activities of everyday life. I disagree. It is not a usual activity of everyday life to stand and walk for much of a twelve hour period during the day in addition to activities of daily living like dressing, washing, and preparing food. The physical acts of walking and standing, in

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and of themselves, are ordinary but the requirement to perform them over a long shift is not usual. The worker's job requires that she be on her feet for much of her shift.

- (13) I accept the opinion of the worker's attending physician concerning this matter. It was the long periods of standing and walking, required job activities, that aggravated the eczema, more particularly the fissures in the soles of the feet caused by the eczema, to the point of disability. The worker was disabled because she had to walk and stand for such long periods of time at her work.

Conclusion

- (14) I allow the worker's appeal. The file is returned to Compensation Services for the calculation and payment of appropriate health care and wage loss benefits.

Daphne A. Dukelow
Appeal Commissioner

DAD:lm

