

Decision of the Appeal Division

Number: 2002-1530

Date: June 20, 2002

Panel: Marguerite Mousseau

Subject: Schedule B and Ankle Tendinitis

OCCUPATIONAL DISEASE, (SCHEDULE B PRESUMPTION) (TENDINITIS) (CAUSATION) (MEDICAL OPINION, DIFFERENCE OF) – Appeal from Review Board finding – The worker, a custodian for 12 years, experienced left ankle pain and claimed compensation five months after Panel of Administrators' amendments to Schedule B – The old policy classified tendinitis of the leg or foot as an occupational disease using a rebuttable presumption – The new policy eliminated this presumption for foot and ankle tendinitis and required evidence the condition was caused by the worker's employment – In this case medical evidence and a site visit report were inconclusive – The panel was unable to find "a causative relationship between the worker's employment and his ankle pain" – The worker's appeal was denied.

Law: WCA (1996): s. 6, s. 6(3), s. 1, Schedule B

Policy: RSCM: #27.10, #27.11, #27.12, #27.20, #27.35, Panel of Administrators' resolution 99/11/19-3

Schedule B and Ankle Tendinitis

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- (1) The worker is appealing a decision to deny his claim for compensation for left ankle problems which he developed sometime between July and September 2000. At the time that he developed left ankle pain the worker had been a custodian in a school for about twelve years. A nurse advisor conducted a work site visit, with the worker in attendance, to assess risk factors for ankle injury. After this assessment, an officer of the Workers' Compensation Board (the "Board") informed the worker in a letter dated November 6, 2000 that it was unlikely his ankle problem had been caused by his work. As a result, he was not entitled to compensation.
 - (2) The worker appealed this decision to the Workers' Compensation Review Board (the "Review Board"). In findings dated January 9, 2002, the Review Board denied the worker's appeal citing uncertainty as to onset of symptoms, uncertainty as to diagnosis and absence of occupational risk factors for a left ankle problem as reasons for denying the worker's appeal. The worker appeals the Review Board findings to the Appeal Division.
 - (3) The worker requested an oral hearing which was denied on a preliminary basis by the deputy chief appeal commissioner. After reviewing the evidence and submissions on file I agree that an oral hearing is not necessary in order to address this appeal. I do not believe that the worker's credibility is at issue although he has raised that concern. In addition, greater detail regarding all of the motions involved in his work is unlikely to result in a more accurate understanding of the occupational risk factors for ankle injury.

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- (4) A union representative is acting on behalf of the worker and has provided a submission in support of the worker's appeal. The employer is participating in this appeal and has also provided a submission regarding the worker's appeal.

Issue(s)

- (5) The issue on this appeal is whether the worker's left ankle problem is due to the nature of his employment.

Background

- (6) The worker submitted an application for compensation on September 26, 2000 saying that he had experienced a sharp pain in his left ankle while using the floor buffing machine. He said that he had used this machine for 12 years. His ankle continued to hurt despite medical treatment and he believed that it was due to overuse related to using the buffing machine 2.3 hours each day.
- (7) The medical reports to the Board indicated that the worker had some type of ankle strain or tendinitis but they were not particularly consistent or specific in identifying the affected tendon(s). In his first report to the Board, Dr. L, the worker's attending physician provided a diagnosis of "muscle strain (over-use) of [lateral] ankle & lower leg." The next report provided a diagnosis of left ankle and lower leg tendinitis – overuse strain. Subsequently, Dr. L provided a diagnosis of left ankle strain and tendinitis of the Achilles tendon.
- (8) In November/December the worker saw Dr. S as an attending physician and he provided a diagnosis of ankle tendinitis. In December, the worker saw Dr. P, a physician with a background in sports medicine. In his consultation report of December 5, 2000, he provided a diagnosis of "left lateral ankle and calf pain/not yet diagnosed." The worker started seeing Dr. K as a family physician in January and, in his reports to the Board, he provided a diagnosis of peroneal tendinitis.
- (9) A site visit was conducted on October 26, 2000 to see if the worker's employment involved risk factors for injury to his left ankle and his claim for compensation was denied after this site visit.

Jurisdiction

- (10) My jurisdiction in this appeal is found in sections 91 and 96(3) of the *Workers Compensation Act* (the "Act"), which give the Appeal Division the authority to rehear and redetermine any matter that has been dealt with by the Review Board. The Appeal Division also has the discretion to conduct a full inquiry into all of the issues arising out of an appeal that is before it.

Law and Policy

- (11) Section 6 of the Act provides that compensation is payable to a worker who suffers an occupational disease that is due to the nature of his or her employment. The Act provides different ways for establishing that a disease is an occupational disease. Under section 6(3) of the Act there is a presumption of work causation in certain cases. Section 6(3) states:

If the worker at or immediately before the date of the disablement was employed in a process or industry mentioned in the second column of Schedule B, and the disease contracted is the disease in the first column of the schedule set opposite to the description of the process, the disease is deemed to have been due to the nature of that employment unless the contrary is proved.

- (12) A disease may also be recognized as an occupational disease under section 1 of the Act “by regulation of general application.” When a worker develops a disease recognized in this regulation, there is no presumption of work causation but the evidence may establish that the condition is due to the worker’s employment.
- (13) In addition, a disease may be recognized as an occupational disease “by order dealing with a specific case” under section 1 of the Act. This involves a situation where a worker has a condition which has not been recognized as an occupational disease under Schedule B or by regulation but there is sufficient evidence to establish that the condition was caused by his employment. In this situation, the condition may be recognized as an occupational disease by order.
- (14) Prior to March 29, 2000, tendinitis of the “leg or foot” was recognized as an occupational disease under Schedule B of the Act. The process set out next to the condition was “Where unaccustomed and repetitive use of the affected arm, hand, leg or foot is required.”
- (15) This meant that there was a rebuttable presumption that a tenosynovitis or tendinitis of the leg or foot was due to the employment if prior to developing the condition the worker had been engaged in repetitive and unaccustomed use of the tendon involved.
- (16) In resolution 99/11/19-3 the panel of administrators amended items #12 (bursitis) and #13 (tenosynovitis, tendinitis) of Schedule B and sections 27.10, 27.11, 27.12 and 27.20 of the Manual. These sections in the Manual provided guidance on the adjudication of claims for tendinitis and bursitis. The amendments to Schedule B eliminate any reference to tendinitis of the leg or foot in item #13.
- (17) The amendments to the policies mirror the changes to Appendix B. They explain and provide guidelines on the relationship between the types of tendinitis specified in Schedule B and the activities described in association with those types of tendinitis. In addition, amendments to the policy at item #27.11 (now item #27.12) strike out a reference to tendinitis of the ankle. Previously, this policy included “the ankle, including achilles tendinitis” as a common site for inflammation of the tendon and/or its synovial sheath. This reference has been struck.

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- (18) Resolution 99/11/19-3 states the amendments are effective 30 days after publication of the resolution in the B.C. Gazette and they “shall apply only to those claims where the initial application for compensation has been received by the Board on or after the effective date of such amendments.”
- (19) The resolution was published in the B.C. Gazette, Volume 43, Number 3, Part 11 (B.C. Reg 391/2000) on February 28, 2000. Accordingly, the effective date of the resolution is March 29, 2000.
- (20) It seems quite clear, from the above, that tendinitis involving ankle tendons is no longer recognized as an occupational disease under Schedule B of the Act. Accordingly, there is no presumption of work relatedness based on a worker having engaged in certain activities. This type of tendinitis may still be accepted as an occupational disease but this requires that it be designated an occupational disease “by order dealing with a specific case” under section 1 of the Act.
- (21) Where the diagnosis is unclear, it is still possible to designate the condition as an occupational disease according to item #27.35 of the Manual. This will sometimes occur where a worker has been diagnosed with “overuse syndrome” or other non-specific diagnosis referring to a soft tissue disorder which is attributed to repetitive use of the affected tissues.

Reasons and Decision

- (22) In this worker’s case, the diagnosis is somewhat questionable but I have set out the law and policy regarding ankle/foot tendinitis because the worker’s representative has argued that the worker is entitled to the presumption under Schedule B for tendinitis. In addition, the Review Board stated that the amended Schedule B was applicable to cases of tendinitis and tenosynovitis without indicating that Schedule B no longer includes ankle and foot conditions. It is evident from the above however, that ankle/foot tendinitis is no longer recognized as an occupational disease under Schedule B of the Act. Since the worker’s application for compensation was submitted after the effective date of the amendments, there is no presumption that would be applicable to his ankle condition.
- (23) It is recognized in compensation law and in the policy at item #27.35 that a diagnosis is not essential for compensation. However, in most cases there will be a diagnosis and this is important because it is difficult to identify the mechanism of injury in the absence of a diagnosis. In the case of a tendinitis, it is important to know which tendon is affected because certain activities involve the use of specific tendons. If the worker was involved in activities which did not make particular use of those tendons, it is not likely that his condition was caused by the work.
- (24) In this case it is not clear which tendon is affected or whether, in fact, the worker has tendinitis. The worker’s representative disagreed with the Review Board finding that the diagnosis of the ankle condition was uncertain. I recognize that Dr. L and Dr. K both diagnosed tendinitis but each one diagnosed tendinitis of a different tendon. Dr. L diagnosed an achilles tendon problem (at the back of the ankle) and Dr. K diagnosed a peroneal tendon problem (on the

outside of the ankle towards the back). Dr. P, who would likely have some greater degree of experience in diagnosing ankle tendon injuries, given his background in sports medicine, was not able to provide a diagnosis.

- (25) Given the above, I agree with the Review Board that there is no definitive diagnosis of the worker's ankle problem. I accept Dr. P's conclusion of left lateral ankle and calf pain.
- (26) The next question is whether the worker's activities would likely cause an overuse problem or other unspecified tissue disorder. The worker initially thought that his ankle pain was caused by his daily use of the buffer machine and in her report of the site visit the nurse advisor noted that the worker found this activity the most troublesome. She described the worker's body position as he went through the motions he used while buffing with the machine and she described which aspects of the ankle were stressed or strained by this activity.
- (27) She said that the motion placed stress on the medial aspect (inside) of the ankle and it did not place stress on the lateral (outside) aspect of the ankle or the Achilles tendon. Accordingly, she thought it unlikely that this activity had caused the worker's ankle problem. She noted that the worker had also moved some furniture in July and she also described his other three main activities, tidying of classrooms, sweeping hallways, and sweeping the gym. In her view, none of these involved movements that would stress the ankle area where the worker was having pain.
- (28) The worker and his representative have objected to the nurse advisor's opinion. In his submission to the Review Board the worker argues that the use of the machine did stress his ankles and that it was incorrect that he did not have to climb stairs. He also added that he performed several other activities which were not described.
- (29) With regard to the worker's submission on the site visit report, it is not necessary that every single activity be described. The purpose of the site visit is to assess the activities involved in the main duties of a particular position. The nurse advisor has done this. The worker has not described any activity which suggests a greater risk for developing the problem than those activities already described – quite the opposite.
- (30) In his submission to the Appeal Division, the worker's representative states that the site visit reflects just a "snap shot" of the work activities and does not reflect the increased workload during the summer months. This may be true but if none of the activities performed result in stresses to the affected area, more of the same activity is not going to create any greater likelihood of injury. I do not dispute that a job which involves standing and/or walking while performing various tasks would cause symptoms if a worker had an ankle problem. But, this is not the same as saying that these activities caused the problem. In this regard I note that the worker's symptoms are exacerbated by activities outside of work as well, according to Dr. P's report of December 5, 2000.
- (31) In this report Dr. P notes the worker reported that the use of the floor polisher aggravated his pain. The worker told him that the symptoms were activity related and usually occurred toward the end of his shift. But, the worker also said that when he goes shopping with his wife "he has a lot of difficulty standing in one position or walking in the Mall."

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- (32) Finally, I have also considered the medical legal opinion provided by Dr. L at the request of the worker's representative. In a report dated November 5, 2001 Dr. L said "I do believe that on balance of probabilities his tendonitis was directly related to his increased floor polishing done on his job as a school cleaner. This activity had increased with the school re-opening and proceeded [sic] the symptoms." This is not entirely the case though, although the worker did not see Dr. L until September, he has stated that his first symptoms appeared in July before he went on vacation and well before school re-opening.
- (33) I recognize that the worker spends most of every working day performing activities that involve standing or walking. When one develops a foot or ankle problem in this situation it is reasonable to look to work activities as a possible cause. On the other hand though, the worker has done this work for twelve years without previously developing foot or ankle problems and the site visit did not reveal any specific activity regularly performed by the worker that would particularly affect the area of injury. In addition, the nature of the injury itself is not clear. In these circumstances, I am unable to find that there is a causative relationship between the worker's employment and his ankle pain. I consider it unlikely that his ankle pain is due to the nature of his employment.
- (34) The worker's appeal is denied.