

Decision of the Appeal Division

Number: 92-0500
Date: February 26, 1992
Panel: Hilrie Reimer, Verna Ledger, Derrick Spooner
Subject: An Award for Female Sexual Dysfunction

The employer appeals from Review Board findings dated July 18, 1989.

[This decision has been edited to focus on the issue of the granting of an award for female sexual dysfunction.]

The worker demonstrated symptoms of cervical myelopathy and her award of 5% of total disability was to compensate for altered station and gait.

The worker appealed the decision to the Review Board, maintaining that her functional impairment was greater than that assessed by the Workers' Compensation Board.

Prior to making a final decision, the Review Board, following receipt of a consultation report from the attending physician, referred the matter back to the disability awards medical advisor. The attending physician noted complaints of sexual and bladder dysfunction and complaints of upper limb as well as lower limb problems. Based on the A.M.A. guide, the attending physician assessed the worker's overall disability at 35% of total.

The worker was reassessed by Doctors T and G. P who found, based on the A.M.A. guide, the worker's upper and lower limb impairment could be assessed at 10% of total disability. No recommendation was made in relation to the bladder and sexual dysfunction. It was suggested by Dr. G. P that the worker undergo M.R.I. and urodynamic studies.

The Review Board agreed with Dr. T and Dr. G. P that the worker's upper and lower limb impairment was 10% of total disability. In addition, the Review Board applied their judgment, with reference to Dr. A. P's findings and the A.M.A. guide, that impairment for bladder should be assessed at 10% of total disability and sexual dysfunction at 5% of total disability.

Doctors T and G. P, whose assessment is not being challenged by the employer, recommended that further investigation be undertaken to assess the worker's bladder and sexual dysfunction. These studies were not undertaken by either the Board or the Review Board. In order to consider the accuracy relating to the percentages applied for bladder and sexual dysfunction, the panel requested the vice-president of Medical Services to arrange the appropriate referral.

The worker's sexual functioning status was evaluated by Dr. S on November 4, 1991. Dr. S has been a full professor in the division of sexual medicine, Department of Psychiatry at U.B.C. since 1978. He is also the director of the Inpatient Services of the Sexual Medicine Unit, University Hospital – Shaughnessy site and consultant in sexual medicine at the G.F. Strong and Pearson centres of the B.C. Rehabilitation Society. His teaching, research and clinical work is focused on disorders of sexual functioning which occur following injuries of the spinal cord, and in association with medical and surgical conditions. Dr. S notes that the attending physician had stated that his evaluation of the worker's sexual function as "mild impairment," rated 5 to 10%, was "on the low side."

After extensive investigation, Dr. S's diagnosis as stated in his report is as follows:

It is my opinion that ... [the worker] is suffering from certain sexual impairments, sexual disabilities and sexual handicaps. In these terms ... [the worker's] documented sexual impairment and disabilities have resulted in 100% sexual handicap.

Dr. S explains the diagnosis in part as follows:

Sexual impairments refer to structural or functional changes in sexual physiology and anatomy.

... [the worker's] genital structures are normal, but the physical examination results suggest that she has lost her capacity for orgasmic reactions. The critical pathways for orgasmic experiences include the lateral spinothalamic tracts (conducting the pain, heat and cold sensations) and the corticospinal tracts (conducting motor commands). In her case both of these *nerve pathways have been at least partially affected.* (emphasis added)

The employer has questioned the validity of an award for sexual impairment on the basis that reports on file indicate that subsequent to the injury the worker still had sex once a week. Dr. S explains that, because of the worker's physical impairment, the sexual "interaction" became reduced over the 2 years following the injury to about 1 per 4-6 weeks until the husband left for another partner some time in 1988/89. Dr. S describes a crisis situation:

She desperately wanted some feeling of intimacy. Intercourse was their way to communicate these feelings. They attempted intercourse. During their attempted embrace she again could not tolerate the irritating burning sensations on her body, had urinary urgency, had to leave the bed; he became frustrated with her and they ended up saying "forget it" meaning that "sex" just did not work for them anymore ...

Dr. S emphasized that:

Her history suggests that a degree of sexual arousal might be still possible, but even this will be interrupted by strange sensations arising from her body, *urinary urgency and hyperreflexia* in the extremities. (emphasis added)

The prognosis for improvement is less than hopeful. Dr. S states:

Assuming that ... [the worker's] spinal cord dysfunction will remain unimproved, her sexual impairment and *her sexual disability described above will remain. As things are now ... her sexual handicap will lead to a lonely and embittered existence.* (emphasis added)

Reasons and Findings

This panel of the Appeal Division has reviewed the findings of the Review Board with reference to law and policy.

In comparing Dr. S's evaluation with previous assessments on file, the panel was guided by Board policy as outlined in the *Rehabilitation Services and Claims Manual* ("Manual"), #39.43. The principles outlined in this item, however, relate only to male workers. Although the governors have not established a schedule on which to base an award for female sexual disability, they have accepted in principle that an award is payable where an injury causes damage to the sexual organs of a female. [Editors' note: See Decision No. 157, *Workers' Compensation Reporter*.] The *Manual* lists three categories in which cases involving male impotence are considered:

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1. Impotence resulting from paraplegia, quadriplegia, or similar disabilities;
 2. Where a physical injury results in psychological disturbance, and the impotence is a symptom or consequence of the psychological disorder;
 3. Where a compensable injury or industrial disease has caused permanent damage to the genital organs resulting in impotence.

Dr. S found the worker has permanent nerve damage to the genital organs, resulting in loss of sensation and orgasmic ability. He concludes that her impairment is total and permanent. This panel accepts Dr. S's expert evidence. We find that the worker's sexual impairment is most appropriately compared to cases considered in category 3. The worker is therefore entitled to a permanent partial disability award.

Item #39.43 of the *Manual* further provides:

As with other kinds of physical impairment, a standard percentage rate is established.

The age adaptability factor that is used with regard to other disabilities is not used with regard to impotence. Instead there is a scale to provide percentages of total disability that are higher for a younger worker, and that decrease according to age at the time of injury.

The worker was under 45 years of age at time of injury, and therefore, according to this section of the *Manual* is entitled to 15% of total disability for sexual dysfunction.

The *Manual* stipulates that:

Once the percentage rate has been established in respect of the injury to a particular worker, then of course that percentage rate remains constant for that injury to that worker unless there is a subsequent change in the condition of the injury.

The percentages mentioned above relate to cases of complete impotence, but uncomplicated by other factors. If there are additional injuries or problems, such as *urinary dysfunction*, additional consideration must be given to the additional problems. (emphasis added)

This panel accepts the Review Board's finding of 10% of total for the worker's functional impairment as a result of her bladder problem, which is consistent with Dr. S's report and the guidelines provided in the A.M.A. guide. This panel also accepts the 10% awarded for upper and lower extremity impairment (although this was not challenged by the employer) as assessed by Doctors T and G. P and accepted by the Review Board.

As a result of the further medical investigations undertaken, this panel finds that the worker is entitled to an increase in her disability award from 25% to 35% of total.

Conclusion

The employer's appeal is denied. The file is returned to the Compensation Services Department for the appropriate adjustments to the worker's disability award.

Editors' note: This decision has been edited for publication.

