Appeals Commission for Alberta Workers' Compensation

Docket No.: AC0505-23-69
Decision No.: 2024-0242

Decision Summary

[1] **The Workers' Compensation Board does have additional responsibility for a hernia under this claim.**

Introduction

[2] The worker disagrees with the Workers' Compensation Board (WCB) June 9, 2023, denial of his claim that his diagnosed hernia was related to the claim. He believes his hernia was caused by excessive vomiting because of his symptoms of post-traumatic stress disorder (PTSD).

[3] On September 1, 2023, the Dispute Resolution and Decision Review Body (DRDRB) confirmed the WCB decision.

[4] The worker filed the *Notice of Appeal* within the statutory time limit. The respondent and the WCB were notified of the appeal and provided an opportunity to participate. Neither chose to participate.

Preliminary Matters

Additional Documents

[5] On May 13, 2024, the representative submitted the following additional documents (4 pages) that were added to the ADP:

[5.1] March 14, 2024: Worker's surgeon's letter.

[5.2] May 11, 2024: Representative's written submission.

Issue

[6] **Does the Workers' Compensation Board have additional responsibility for a hernia under this claim?**

Analysis:

Legislation and Policy

[7] The *Workers' Compensation Act*, RSA 2000, c W-15 (*WCA*) governs the workers' compensation system in Alberta. The purpose of the workers' compensation system is to provide appropriate compensation to workers who suffer workplace-related injuries and illnesses.

[8] Subsection 13.1(1) of the *WCA* provides the Appeals Commission with exclusive jurisdiction to hear appeals of decisions made by the DRDRB. Pursuant to subsection 13.2(6) of the *WCA*, the Appeals Commission is bound by the WCB policies related to the issue at appeal.

[9] Section 24(1) of the *WCA* provides compensation to a worker who suffers personal injury by an accident. According to section 1 of the *WCA*, an accident arises out of and occurs in the course of employment in an industry to which the WCA applies.

[10] The provisions guiding claim acceptance are found in WCB Policy 03-01. To be considered compensable an accident must arise out of and occur in the course of employment. When determining its responsibility WCB will evaluate the relationship between the injury and the compensable accident.

[11] The same policy also tells us there are several types of herniae and, other than inguinal, they are not normally caused by employment. When determining its responsibility, WCB will evaluate these cases on the basis of individual merit.

[12] Full excerpts of the legislation and policy referenced and applied in this decision can be found in the attached appendices. The panel has applied the WCB legislation currently in effect on the date of hearing and the applicable policy that was issued and in effect when WCB's adjudicative decision was made.

Questions to be Answered

[13] To establish an acceptable claim, the panel must answer these questions:

[13.1] Does the weight of medical evidence establish that the worker has been diagnosed with a hernia?

[13.2] If so, does the weight of medical evidence establish a causal relationship between the hernia and the compensable accident?

Key Submissions

[14] The representative's submissions are summarized as follows:

[14.1] On February 7, 2024, the worker underwent a successful laparoscopic right inguinal hernia repair with mesh. This surgery confirmed the presence and exact nature of the hernia and effectively corrected it. The worker's post-operative progress allowed him to resume normal physical activities.

[14.2] The worker's surgeon confirmed that intense recurring vomiting, which the worker asserts is a symptom directly stemming from this compensable PTSD, can cause increased intra-abdominal pressure. This contributes substantially to hernia development. The representative argued that the surgeon's expert opinion aligns with medical literature and supports a reasonable causal link between the worker's work-induced PTSD and his hernia.

[14.3] If an employment related injury aggravates, accelerates, or in any way contributes to a secondary condition, it should be compensable.

[14.4] In summary, the evidence of the worker's surgeon supports the worker's claim that his hernia was caused by the physiological impacts of his PTSD, incurred in the line of duty. The worker should be entitled to compensation for his hernia as work-related injury.

Evidentiary Findings

[15] We find that the weight of medical evidence establishes that the worker was diagnosed with a hernia. We refer to the following information:

[15.1] An April 4, 2023, right inguinal ultrasound demonstrated a reducible right inguinal hernia containing both mesentery fat and bowel.

[15.2] In a June 1, 2023 report, a WCB medical consultant noted:

> "According to the ultrasound, the hernia sac extended towards the scrotum, this would suggest an indirect hernia."

[15.3] In a March 14, 2024 letter, the worker's surgeon reported that on February 7, 2024, the worker underwent the following procedure: "Laparoscopic Right Inguinal Hernia with Mesh."

[16] We understand from the reporting that the medical consultant accepted the results of the April 4, 2023, ultrasound showing the worker had a right inguinal hernia. We also place significant weight on the letter from the worker's surgeon who completed a laparoscopic right inguinal hernia repair with mesh to support the diagnosis. We are satisfied that the medical evidence establishes a confirmed diagnosis of a hernia.

[17] We find the weight of medical evidence does establish a causal relationship between the hernia and the compensable injury. We rely on the following evidence:

[17.1] The March 21, 2023, Physician Progress Report notes one of the symptoms as:

> "As a result of the anxiety he had been vomiting daily. At one point in December he felt a popping sensation in his right groin."

[17.2] In a June 1, 2023 report, the medical consultant noted that indirect hernias stem from an abnormal embryological development resulting in a defect in the abdominal wall creating an area of potential weakness through which a hernia may form. She stated that this would be due to a congenital abnormality rather than the vomiting reported by the worker. While acknowledging the worker's vomiting may have brought light to his congenital abnormality, she opined that it was not the cause of his hernia.

[17.3] In a March 14, 2024, letter, the surgeon who repaired the worker's right inguinal hernia opined:

> ". . . groin hernias can be caused by intense vomiting. Intense recurring vomiting creates increased intra-abdominal pressure and create [*sic*] premises to develop a hernia."

[18] The evidence shows that the worker reported daily vomiting and a popping sensation in his right groin as early as December 2022.

[19] We understand from the medical consultant's report that indirect hernias stem from an abnormal embryological development resulting in a defect in the abdominal wall creating an area of potential weakness through which a hernia may form. We also understand from her report that direct hernias arise from a weakening or tearing in the abdominal wall. While recognizing her opinion that the hernia would be due to a congenital abnormality rather than the vomiting reported by the worker, we are not convinced. We place significant weight on her indication that a hernia may be caused by a weakness in the abdominal wall. In our view the weakness in the wall, however caused, sets the scene for the herniation to occur and the effective cause of the hernia in this case, was the vomiting.

[20] We interpret the surgeon's opinion to mean that intense recurring vomiting creates increased intra-abdominal pressure and creates premises to develop a hernia. On this point, we find the medical consultant and the surgeon agree.

[21] We interpret the medical reporting to mean there was no hernia until there was intense, recurring vomiting. We find support in the surgeon's opinion to mean that vomiting can cause a hernia. We place most weight on the surgeon's reporting because he performed the hernia repair surgery while the medical consultant did not examine the worker.

[22] The representative asked the panel to place more weight on the surgeon's opinion that intense, recurring vomiting was a symptom directly stemming from the worker's compensable PTSD, which can cause increased intra-abdominal pressure. The panel agrees. On a balance of probabilities, we find it is more likely than not that the vomiting caused the hernia because, without the vomiting, there is no hernia.

Conclusion

[23] The weight of medical evidence establishes that there is a confirmed diagnosis of a hernia.

[24] The evidence demonstrates that the worker's hernia was caused by the compensable accident.

Decision

[25] The Workers' Compensation Board does have additional responsibility for a hernia under this claim.

[26] The appeal is allowed.

[27] The September 1, 2023, Dispute Resolution and Decision Review Body decision is reversed.

This decision is made with the full agreement of the hearing panel.

Decision signed in Edmonton, Alberta on May 27, 2024.

M. Weatherall
Hearing Chair
(on behalf of the panel)

Hearing Panel:	M. Weatherall	– Hearing Chair
	J. Tiessen	– Commissioner
	M. Humphreys	– Commissioner

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Appendix A

Legislation – *Workers' Compensation Act*, RSA 2000, c W-15 (*WCA*)

Subsection 13.1(1) and 13.2(6) sate:

"**Power of Appeals Commission**

13.1(1) Subject to sections 13.2(11) and 13.4, the Appeals Commission has exclusive jurisdiction to examine, inquire into, hear and determine all matters and questions arising under this Act and the regulations in respect of

(a) appeals from decisions of a review body under section 9.4,

(b) repealed 2020 c32 s3(8),

(c) appeals from determinations of the Board under section 21(3), and

(d) any other matters assigned to it under this or any other Act or the regulations under this or any other Act,

and the decision of the Appeals Commission on the appeal or other matter is final and conclusive and is not open to question or review in any court.

. . .

13.2(6) In the hearing of an appeal under this section, the Appeals Commission

(a) shall give all persons with a direct interest in the matter under appeal an opportunity to be heard and to present any new or additional evidence,

(b) is bound by the board of directors' policy relating to the matter under appeal,

(c) shall, subject to subsection (6.1), permit the Board to make representations, in the form and manner that the Appeals Commission directs, as to the proper application of policy determined by the board of directors or of the provisions of this Act or the regulations that are applicable to the matter under appeal,

(d) may confirm, reverse or vary the decision or determination appealed,

(e) may direct that its decision be implemented within a specified time period, and

(f) may refer any matter back to the review body or the Board, as the case may be, for further action or decision, with or without directions."

Section 24(1) states:

> "**Eligibility for compensation**
>
> **24(1)** Subject to this Act, compensation under this Act is payable
>
> (a) to a worker who suffers personal injury by an accident, unless the injury is attributable primarily to the serious and wilful misconduct of the worker, and
>
> (b) to the dependants of a worker who dies as a result of an accident."

Appendix B

Workers' Compensation Board Policy

Policy 03-01, Part 1, Application 1: Arises Out of and Occurs in the Course of Employment, Interpretation 4: states, in part:

"**POLICY:**

WCB will determine whether an *injury* has occurred as the result of a compensable accident, and will adjudicate appropriate compensation and services from the *date of accident*. WCB may also consider a *second injury* compensable if it is the direct result of the original compensable injury.

When determining its responsibility, WCB will evaluate the *relationship between the injury and the compensable accident*. In second injury cases, WCB will evaluate the relationship between the original compensable injury and the second injury.

This policy is effective February 1, 2012, except when noted otherwise in a specific policy section(s).

. . .

4.0 Relationship Between the Injury and the Compensable Accident

Many injuries (e.g., strains, sprains, burns, cuts, etc.) have an obvious relationship to the compensable accident; consequently, determining WCB's level of responsibility is relatively simple. However, there are other injuries which, because of their progressive nature or less obvious relationship to employment, require consideration of relevant factors both in and outside employment which may have contributed to or caused the injury (see Part II, Application 1, Relationship to Compensable Accident)."

Policy 03-02, Part II, Application 1: Aggravation of a Pre-Existing Condition, Questions 1 and 4 state:

"**1. When are claims adjudicated under this policy?**

For a claim to be considered under this policy there must be the confirmed presence of a pre-existing condition and evidence it was aggravated by a compensable accident.

The fact that a worker has a pre-existing condition does not necessarily mean it was aggravated by the compensable injury. If the clinical diagnosis of a pre-existing condition is incidental to the nature of the disability, the claim is not subject to this policy.

WCB does not extend coverage under this policy or under Policy 02-01 (*Arises Out of and Occurs in the Course of Employment*) if the need for treatment or lay-off from work is due solely to a pre-existing, non-compensable condition.

. . .

4. *What medical costs does WCB cover?*

When a claim is adjudicated under the aggravation policy WCB authorizes all necessary medical treatment to help the worker recover from the effects of the work injury. Surgery required solely for the non-compensable pre-existing condition may be accepted on a limited basis under the Rehabilitation Surgery Program (see Application 2)."