IN THE MATTER OF THE WORKERS' COMPENSATION ACT

AND

IN THE MATTER OF THE APPEAL OF ERNEST FLEGG

WORKERS' COMPENSATION CLAIM NUMBERS EC66068768; EC83331432

HEARING HELD: APRIL 30, 1986, PRINCE GEORGE, B. C.

APPEARANCES:

On behalf of appellant: Mr. Dick Byl, Legal Counsel
Mrs. Flegg (Observer)
Dr. A.W. Mooney, Medical Witness

This is an appeal from the decision of a Claims Adjudicator contained in a letter of October 31, 1984. In that letter the appellant was advised that:

> "Further to our discussion of October 23, 1984, this letter will formally advise you our decision on your claim.
>
> Your claim has been reviewed by our Medical Advisor and it is his opinion that your ongoing complaints of headache, nausea, backpain, and ringing in the ears, are not related to your injury of February 14, 1983, or your previous head and neck injury under claim number EC66068768. Our Medical Advisor indicates that your ongoing complaints are more likely related to a pre-existing degenerative condition in your back.
>
> Based on the above opinion, which I am agreeing with, it is my decision to final wage loss effective October 23, 1984."

An appeal was received from this decision on November 5, 1984.

Dr. Mooney advised the panel that the appellant's symptoms consisting of vertigo, loss of balance, partial deafness, tinnitis and nausea were the result of a condition known as Meniere's syndrome which he related to trauma to the head as a result of his work injuries particularly the most recent one in 1983. Although the doctor related this condition to these injuries he also noted that the Meniere's syndrome or disease can come on without any precipitating trauma. The doctor made

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reference to the degenerative condition in the appellant's lumbar and cervical spine which he felt were manifestations of the two injuries.

The claim history indicates that the appellant was initially injured on September 16, 1966 when while employed as a faller he was struck on the head by a snag. The initial medical report notes superficial lacerations to the forehead but subsequent reports primarily involved treatment for neck symptoms. X-rays taken in November of 1966 did not indicate any evidence of fracture and indicate early degenerative changes at that time. Wage loss benefits were paid on this claim from September 20, 1966 to January 16, 1967.

An orthopaedic surgeon's report of December 8, 1966 indicated that the appellant may have had damage to the disc between C6 and C5 with in all probability a minor protrusion on the left side. At that time the symptoms were gradually subsiding.

A Board Medical Advisor who examined the appellant on March 2, 1967 referred to the injury as a moderate one. He was examined by an orthopaedic surgeon again on April 13, 1967 complaining of continued pain in his neck together with headaches. The doctor referred to his condition as a ligamentous injury to the cervical spine and possibly some disc damage between C5 and C6. There was no evidence on the neurological examination to indicate that there was any definite disc protrusion to warrant a myelogram at that time.

At our hearing the appellant indicated that he had never completely recovered from the neck symptoms as a result of his 1966 accident. Although he continued to work as a faller and equipment operator he advised that he continued to have symptoms. He said that he had difficulty operating equipment because of the difficulty backing up when he turned his head, causing considerable neck pain.

The appellant's next injury occurred on February 14, 1983 while working as a faller. He gave evidence that while falling a tree, a tree kicked back catching him behind the legs, knocking him backward and he landed on his back on the frozen ground. As a result of this injury he said that he was in shock and had a very stiff neck and sore back for the following two weeks. He said that following the injury he became very sick almost immediately.

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The appellant was seen by his doctor on February 14, 1983 and his symptoms were described as abdominal pain and weight loss. The injury was described in a hospital report of February 28, 1983 as:

> "Patient was falling a tree at work and fell on back. 14th, February 1983."

A hospital admission report of March 1, 1983, describes the appellant's condition when seen in emergency on the evening of February 28, 1983 as complaining of abdominal pain and vomiting. The doctor notes that three or four weeks ago, prior to the admission to hospital he had aches and pains primarily in the neck and back area brought on by a slipping episode which lasted about a week and then cleared up. However, the doctor goes on to say that he began to have stomach pains which are described as being mid abdomen, dull pain associated with nausea lasting anywhere from fifteen to twenty minutes starting about three weeks ago again.

Subsequent medical reports referred to a pulsatile, tinnitus in the left ear canal, a bleeding duodenal ulcer, feelings of nausea and complaints of episodes of seeing double and seeing flashing zig-zag lines.

The appellant was examined by Dr. Daly on June 20, 1984, who gives a history of his past neck pain symptoms. The doctor was of the opinion that examination did not suggest any serious intercranial pathology.

It was the appellant's evidence at the hearing that he had never experienced the nausea and ringing ear symptoms prior to his 1983 injury. He also referred to the colourless fluid which was coming from his nose which is also referred to by Dr. Mooney, that started after his 1983 injury. He indicated that his condition has gradually subsided and only comes about when he is engaged in some physical activity which can also bring about the nausea.

It was submitted on behalf of the appellant that the Meniere's syndrome diagnosed by the appellant's attending physician was a result of the appellant's compensable work injuries. We were also advised that the degenerative disc disease in the appellant's cervical and lumbar spine were caused by these injuries and should be accepted by the Board. The remedy being

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sought was for wage loss benefits subsequent to October 23, 1984, when they were terminated. Consideration of a permanent partial disability award was requested. The cost of two medical reports was also requested.

A medical report of April 24, 1986 (Exhibit 1) from Dr. Crous was submitted. The doctor noted that the appellant's main complaint would appear to be his neck. He indicated that the low back pain had gradually healed up over about six months and did not appear to be a problem now as there had been no flare ups from his back and no analgesics used.

It was Dr. Crous's opinion that:

> "... The present complaints are therefore clearly those of cervical spondylosis, with exacerbation by activity and especially activity requiring turning the head and neck.
>
> Past History:
>
> There is a history of an injury to the neck in 1966. That claim resulted in a long period of time loss from work - one year. Notes from that claim indicated that the injury was significant. He had difficulty in turning his head even then - see the notes from Drs. Cook and Shaw. Dr. Cook thought that he had suffered damage to the disc space at C5\6 with a probable protrusion on the left side. He had blurring of vision, headaches, as well as left leg and arm pain.
>
> After that injury his neck bothered him to a certain extent. He had difficulty in turning his head while driving heavy equipment. The symptoms were never as severe as they had been since the injury of 1983."

The doctor further indicated that:

> "... The degenerative disease in the cervical spine was clearly there prior to the injury and was clearly worse after the injury. ..."

In regards to the appellant's tinnitus the doctor noted:

> "It is difficult to assess the contribution that the tinnitus makes to his disability, vis a vis the neck pain. The two seem to go together. These rather strange symptoms could be related to his spondylosis also.

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I do not think that he could work as a faller at this time. I believe his disability is at least partially related to the injury in 1983 and also possibly to the injury in 1966."

Subsequent to the hearing the appellant was examined by a Board Neurological Consultant, at the request of the Review Board. The appellant informed the doctor that he had prior symptoms in his stomach which he related to working on a steep hill, for two or three years prior to the 1983 accident. If he worked as a faller on a steep hill in the evening he would have epigastric problems, loss of appetite, etc.. In 1980 he had a barium study for upper GI problems and the studies were apparently normal.

This information is contrary to that given at our hearing, when the appellant advised that he had never experienced symptoms of this nature prior to the 1983 compensable injury.

The appellant also advised the Board doctor that he had neck symptoms preceding the 1966 work injury but he related his current symptoms to the 1983 compensable accident. At the hearing he aslo recalled a M.V.A. involving a whiplash injury in 1962.

It was the doctor's conclusion that:

"By history, physical examination and by x-ray, the patient has symptomatic cervical spondylosis. This has probably preceded both his accidents but was undoubtedly aggravated by both accidents, in 1966 and 1983.

Although some physicians mention a Meniere-like syndrome in this claimant, there is insufficient historical evidence here to state this definitely. There is a high tone deafness, he has no vertigo and the ear, nose and throat examinations were unable to investigate the labyrinthine function. All that notwithstanding, however, if he indeed was struck on the head as he claims now, in the accident in 1983, tinnitis, particularly pulsatile, could have resulted from the blow. There is no way of knowing now whether he did indeed have C.S.F. rhinorrhea as a result of a blow to the head."

We have considered the opinion of the Board's neurological consultant, together with other medical and factual evidence and we find it necessary to comment and make a finding on the non-medical facts of the accident in 1983. This is in relation to the comment by the Board specialist that "if he indeed was struck on the head as he claims now, tinnitis, particularly

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pulsatile, could have resulted from the blow. There is no way of knowing now whether he did indeed have C.S.F. rhinorrhea as a result of a blow to the head."

Considering the fact that several years have elapsed since the accident and various medical examiners have noted the appellant is a poor historian, reliance must be placed on the documentation available at the time of the accident and subsequent behaviour.

The appellant's own reports, completed over three weeks after the event, indicate that the butt of a tree came back several feet, knocking him over causing him to land on his back on rough, frozen ground. He did not specifically mention any blow to the head and believing it not to be serious did not report that accident to the employer for eleven days in (Employer's Report of Accident). He also continued working until February 25, 1983, although he had sought medical attention earlier because of nausea, associated with back and stomach pains. He advised that he told the foreman that he thought the back and stomach pains were the result of his fall.

A report from the employer is similar, adding that when struck by a small tree which skidded back about five to six feet, he was flipped over backwards landing flat on his back onto a small deadfall.

When seen in Emergency by his doctor on February 28, 1983, it would appear that even in that close proximity of the time of the accident, the appellant was a poor historian. He related aches and pains of three to four weeks duration, mainly on the neck and back area, possibly brought on by a slipping episode. They were reported to have lasted a week and then cleared up. The stomach pains then started about three weeks before the visit on February 28, 1983.

When interviewed by an adjudicator on April 22, 1983 to clarify the history, the appellant advised that the cut tree slipped back hitting him on the back of the legs, taking his feet out from under him. He was flipped, landing on his back on frozen ground. He felt stunned, and a little nauseous.

In none of these reports was there any reference to a blow to the head and no objective medical evidence of such an injury.

The Panel is unable to find that the appellant suffered any injury to the head as a result of the accident on February 14, 1983. Therefore, as a clear medical relationship can not be

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shown between the Meniere-like symptoms and the accident, the decision of the adjudicator relating to the headaches, nausea, ringing in the ears and nasal drip is upheld.

As far as a relationship to the injury in 1966 under the earlier claim is concerned, notwithstanding a substantial trauma to the head, with concussion symptoms, nothing further was heard on that claim for over seventeen years, during which time the appellant continued working in the arduous job of falling. There is, therefore, no medical or other evidence of a relationship between that claimand the Meniere-like symptoms.

In regard to the appellant's neck problems, it seems abundantly clear that he has cervical spondylosis. The Board neurological consultant, stated that by history, physical examination and by x-ray, he had symptomatic cervical spondylosis. These findings are similar to those of Dr. Crous in a report of April 24, 1986, submitted at the hearing.

He states the complaints are clearly those of cervical spondylosis, with exacerbation by activity and especially activity requiring turning the head and neck. He refers to the events in 1966 and similarity of symptoms, which were intermittent over the years. These symptoms have been more severe since the accident of 1983. Dr. Crous clearly implicates both injuries as a factor in the ongoing neck disability.

The Board's neurological consultant also is of the opinion that the cervical spondylosis has been aggravated by the two accidents. While comments have been made about the appellant being a poor historian, examiners have found him honest and straightforward, with no attempt at simulation.

While there is no evidence of a blow to the head in 1983, the sequence of events is such that by being flipped over and landing on his back the appellant would be subjected to stress to the cervical region, similar to a whiplash injury. Some of the symptomatology may be due to the factors unrelated to the injury, however, there is sufficient evidence to show a medical and chronological relationship to the accident in 1983.

While the remedy sought at the hearing was reinstatement of wage loss benefits, it is noted that benefits continued until December, 1983 to allow for investigation of the numerous complaints unrelated to the neck problems. In view of his age

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and multiple health problems, it is quite likely that the appellant was unfit for work when benefits were terminated. However, since the majority of problems have not been found to be related to the injury, we would have to find that there is insufficient medical evidence to show that the neck disability alone was still a temporary total disability beyond the date of termination of benefits. While there have been ongoing neck symptoms, consistent with a permanent aggravation, exacerbations have undoubtedly occurred, and may well continue to occur, as a result of activities such as turning the head, or more stressful activity.

The appeal is allowed to the extent that the appellant should be assessed for any permanent residual neck disability arising out of the aggravation of February 14, 1983.

This Review Board Panel would allow the appellant's appeal to the limited extent which we have outlined in our decision. The costs of the medical reports referred to in our decision should be accepted by the Board on the basis of their fee tariff schedule.

Erik W.Wood
Vice-Chairman

M. Campbell
Member

G.R. Hopper
Member

Review Board

EWW:jb