



Workers' Compensation
Review Board

200, 1700 West 75th Avenue
Vancouver, British Columbia
V6P 6G2
Telephone: (604) 664-7800
1-800-663-2782
Fax: (604) 664-7898

SEP 25 1997

FINDINGS

<u>REVIEW BOARD APPEAL NO.</u>	<u>WORKERS' COMPENSATION BOARD CLAIM NO.</u>	<u>DATE OF DECISION BEING APPEALED:</u>
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962006-B	EC92216516	July 25, 1996
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APPELLANT: Daniel G. KENSLEY
(the "worker")

RESPONDENT: Canadian National Railways
(the "employer")

PANEL: Erik W. Wood, Vice Chair
Bert A. Hawrysh, Member
Carl Liden, Member
(the "panel")

DATE OF HEARING: July 29, 1997
Prince George, B.C.

DATE OF FINDINGS: SEP 18 1997

REPRESENTATIVES:

For Appellant: Dick Byl

For Respondent: Erin Fawcett

DATE OF MAILING: W.C.R.B.
MAILED SEP 19 1997



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RE: Daniel G. KENSLEY
W.C.B. Claim No. EC92216516
Review Board Appeal No. 962006-B
Date of Decision: July 25, 1996

Introduction

The worker, Daniel Kensley, a yard helper for Canadian National Railways was injured on July 10, 1992. He was pulling himself up the ladder of a moving railway car when he injured his right hip. His claim was accepted by the Workers' Compensation Board (the Board) for a right hip strain. Mr. Kensley is appealing a Board decision contained in correspondence of July 25, 1996. The Claims Adjudicator stated, in part:

As I indicated to you in previous conversations, wage loss is only payable when a condition is temporary and there is some medical treatment that will assist you in your recovery. In this case with recent medical information not only not suggesting any further treatment but not even able to provide a diagnosis for your ongoing pain, further wage loss cannot be paid. Your condition is not temporary and there is no known treatment for it.

I would take note of the suggestions regarding a MRI that are on your file. I have spoken to a Board Medical Advisor and it was indicated that without knowledge of where your pain would be originating it would not be possible to perform a MRI. It is a very specific type of scan and is not done on a more generalized area. Therefore a MRI is not seen as appropriate.

Mr. Kensley had also appealed a Board decision of January 2, 1996 from an Acting Manager of Vocational Rehabilitation Services. At the oral hearing of July 29, 1997 Mr. Kensley's representative, Mr. Dick Byl, withdrew the appeal from this decision with the approval of Mr. Kensley.

Issue

At issue in the Board decision of July 25, 1996 is whether the Board erred in not authorizing a MRI scan.



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Evidence

Mr. Kensley was seen by Dr. Phelan on March 29, 1993. He indicated that when he saw Mr. Kensley in January he felt he had a chronic soft tissue injury of the right hip which would slowly improve. He thought there would be secondary referred pain from the lumbar spine and an MRI scan would be useful. In a September 20, 1994 report Dr. Phelan indicated he had difficulty making a precise diagnosis. It was at that point two years post injury and Mr. Kensley was still significantly disabled. He wanted to repeat plain films on Mr. Kensley's hip and lumbar spine and if these were normal, suggested a MRI scan of the area.

Mr. Kensley was examined by a Board Orthopaedic Consultant, Dr. J.H. Ritchie, on April 25, 1995. Dr. Ritchie noted that Mr. Kensley walked with a marked antalgic gait using a cane in the opposite hand and the doctor had the impression that the symptoms were bona fide. Dr. Ritchie thought there may be a probable iliopsoas snapping hip syndrome of the right hip. The doctor felt further orthopaedic consultation should be sought in regard to this. The doctor also noted that it would be of considerable interest to have an MRI of the right hip which could be of help in further delineating or even ruling out any other possible causes of the condition. Dr. Ritchie felt that the need for a MRI scan should nevertheless be left in the hands of the treating orthopaedic surgeon who might not agree with Dr. Ritchie's diagnosis.

Mr. Kensley was examined by Dr. J. Christiaan Coetzee, an Orthopaedic Surgeon, on April 10, 1996. He felt that Mr. Kensley's signs and symptoms did not fit with a specific nerve root involvement. It was very difficult to determine if the pain was from his back or from an area lower down in the sciatic nerve. He could not elicit any hard signs of disc prolapse and felt the pain was more than likely not coming from the hip. A neurologist evaluation was felt to be worthwhile.

Mr. Kensley had an electromyographic assessment from Dr. L.F. Daly, a Neurological Consultant, in May of 1996. The doctor was unable to identify any neurologic complications or evidence of injury to the sciatic, femoral or lateral femoral cutaneous nerve.



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Memo #59 of May 13, 1996, Dr. D.A. Graham states that Dr. Ritchie recommended further investigation with orthopaedic consultation and/or MRI would be recommended. Dr. Coetzee also had difficulty determining a diagnosis for Mr. Kensley's right groin problem and felt the pain was not coming from the hip and recommended EMG studies. Dr. Coetzee did not recommend a MRI as he could not find any true radicular signs associated with something like a disc prolapse to suggest a low back problem. As a result, Dr. Graham did not feel that a MRI investigation was warranted.

Submissions and Hearing Evidence

Mr. Kensley was represented at the oral hearing by Mr. Dick Byl. Mr. Byl indicated that Mr. Kensley was now back at work with the railroad stationed in Prince George and employed as a Yard Master since September 9, 1995 and as a result, the issues contained in the January 2, 1996 Board decision were no longer at issue and the appeal was withdrawn. In regard to the July 25, 1996 Board decision, Mr. Byl said that Mr. Kensley now had a permanent condition and should now have a permanent functional impairment assessment. Mr. Byl submitted that Mr. Kensley still required a MRI scan. Costs for a medical legal report from Dr. Hirsch (Exhibit #1) were requested.

Mr. Kensley advised the panel that he returned to work on September 9, 1995 in Prince George as a Yard Master. He said the job was sedentary in nature and he works at a desk using a computer. He informed the panel that he was making less income now than he did prior to his 1992 compensable injury. He said this was because he had been getting more mileage payment while working on the railroad which increased his income and this was not available to him any longer. Mr. Kensley said that he now experiences pain in both hips which starts on the right side and goes into the left hip as well. He said the pain was always there in the right hip and was aggravated by physical activities such as walking. He said the pain is referred into his low back, thigh and down the leg. There had been no change in his condition in the past year. He uses a cane in his left hand which was given to him by the Board three years earlier. He told the panel that he did not exercise but did stay active.



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A medical legal report was submitted from Dr. Hirsch dated September 4, 1996 (Exhibit #1). He noted on examination there was a palpable clicking, snapping noise that could be constantly brought on during active lowering of the right hip from a flexed position which Mr. Kensley described as causing a lot of discomfort and pain. Mr. Kensley had multiple tender points at his right buttock muscles. The neurological assessment was entirely normal and there was no clinical evidence in keeping with a diagnosis of reflex sympathetic dystrophy. Dr. Hirsch questioned whether Mr. Kensley's painful symptoms arose from the right hip joint or from the ilopsoas tendon. He felt further additional testing was required to include an ultrasound of the right hip as well as an MRI scan, possibly with intra-articular gadolinium contrast enhancement. It was recommended that the test be carried out at the Vancouver General Hospital because of the special expertise acquired at that centre. A differential diagnosis included tearing of the retinaculum resulting in snapping of the right ilopsoas tendon as well as a tear of the labrum. Dr. Hirsch believed that Mr. Kensley had developed a secondary myofascial pain syndrome in respect to the right buttock pain. The doctor felt there was a cause and effect relationship between the onset of the myofascial pain syndrome as well as the painful snapping of the right hip and the injuries suffered to the right hip in a work-related incident of July 10, 1992. The doctor did not believe that the right hip symptoms were due to pathological process affecting the lumbosacral spine and could not identify any neurogenic cause. Dr. Hirsch found no exaggerated illness behaviour, during examination and the doctor did not feel that Mr. Kensley could go back to his former occupation as a brakeman or to any occupation requiring prolonged standing, repetitive bending, lifting, ascending and descending ladders or climbing ladders.

Findings and Reasons

The panel allows Mr. Kensley's appeal from the Board decision of July 25, 1996. In reaching this finding the panel noted the medical opinions of Dr. Phelan and Dr. Ritchie that a MRI would be useful in reaching a diagnosis of Mr. Kensley's ongoing symptoms. We also note that Dr. Ritchie was of the opinion that Mr. Kensley's symptoms were bona fide. The panel accepts Dr. Hirsch's medical opinion that Mr. Kensley requires additional tests including a MRI scan. While the Board has not considered the medical opinions of Dr. Hirsch, the panel recommends that the medical investigative procedures outlined in his September 4, 1996 letter be carried out at the Vancouver General Hospital as he has suggested.



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Following the additional medical investigation outlined by Dr. Hirsch, and a review of the results, the panel recommends that the Board give consideration as to whether Mr. Kensley has been left with a permanent functional impairment as a result of the work injury accepted under this claim which will affect his future earning capacity.

The panel allows costs for Dr. Hirsch's September 4, 1996 medical legal report based on the Board's medical fee schedule.

Conclusion

For the foregoing reasons this Review Board panel allows Mr. Kensley's appeal from the July 25, 1996 Board decision.

Erik W. Wood,
Vice Chair.

Bert A. Hawrysh,
Member.

Carl Liden,
Member.

EWW/sd



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DISTRIBUTION LIST

These findings are sent to the following:

DANIEL G. KENSLEY
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(the worker)

CANADIAN NATIONAL RAILWAYS
ATTN: ERIN FAWCETT
SUITE 2504 - 10004 - 104TH AVENUE
EDMONTON, AB T5J 0K2
(the employer)

DICK BYL
#900 - 550 VICTORIA STREET
PRINCE GEORGE, BC V2L 2K1
(the worker's representative)



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ADVISORY NOTICE

The Workers' Compensation Amendment Act 1989 is effective June 3, 1991. The former Section 91 is repealed.

Attention is drawn to the reduced time period for appeal to the Appeal Division contained in the new Section 91(1):

Appeal to appeal division

91. (1) Where the review board makes a finding under section 90, the worker, the worker's dependants, the worker's employer or the representative of any of them may, not more than 30 days after the finding is sent out, or within a longer period the chief appeal commissioner may allow, appeal the finding to the appeal division.

Written notification to appeal to the Appeal Division should be mailed to:

Appeal Division
Workers' Compensation Board
Box 5350
Vancouver, B.C.
V6B 5L5

or faxed to:

Appeal Division
Workers' Compensation Board
Fax # (604) 276-3349