



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

WORKERS' COMPENSATION REVIEW BOARD

FINDINGS

| REVIEW BOARD APPEAL NO. | WORKERS' COMPENSATION BOARD CLAIM NO. | DATE OF DECISION BEING APPEALED: |
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| 933405-C | EC92347822 | July 20, 1995 |
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APPELLANT: Maura DIAS
(the "worker")

RESPONDENT: Woodward's Stores Ltd.
(the "employer")

PANEL: Ronald H. Bohlin, Vice Chair
Kevin G. Johnson, Member
Earl A. Simm, Member
(the "panel")

DATE OF HEARING: October 18, 1996
Prince George, B.C.

DATE OF FINDINGS: JAN 31 1997

REPRESENTATIVES:

For Appellant: Dick Byl

DATE OF MAILING:

W.C.R.B.
MAILED FEB 03 1997



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RE: Maura DIAS
W.C.B. Claim No. EC92347822
Review Board Appeal No. 933405-C
Date of Decision: July 20, 1995

Introduction

The worker, Maura Dias, was injured at work on July 2, 1992. We propose to say no more about the background as it has been set out many times before, including in previous Review Board findings dated March 6, 1995. As a result of those findings, Ms. Dias was assessed for a permanent functional impairment award. The result of that assessment was conveyed to her by letter of July 20, 1995, informing her that she had an overall level of disability assessed at 4% of total. Ms. Dias appeals.

Issue

The issue on this appeal is whether Ms. Dias' permanent functional impairment award properly reflects her level of disability.

Evidence, Findings and Reasons

Ms. Dias was represented at the oral hearing of her appeal by counsel, Mr. D. Byl. As Mr. Byl put it, this is primarily a pain case. We agree with that view. Mr. Byl did not lead evidence from Ms. Dias, and accordingly, there is no evidence from the worker to recite at this juncture. Essentially, Mr. Byl presented argument based on evidence already on file, including a report which he obtained from Dr. van Rijn, a specialist in physical medicine and rehabilitation as well as clinical impairment and disability. Dr. van Rijn's report is contained in a letter to Mr. Byl dated February 6, 1996 and it was sent to the Board at that time.

The Board's PFI examination was conducted by Dr. J.G. Munro, a Disability Awards Medical Advisor, on June 7, 1995. Dr. Munro's conclusions are contained in Memo No. 20 as follows:

A diagnosis of loss of sensation (anesthesia) of the lateral femoral cutaneous nerve of the right thigh with dysesthesia (painful symptoms) in the same distribution is consistent with the original diagnosis of meralgia paresthetica followed by surgery upon the same nerve and is consistent with the accepted condition of a pinched nerve in the right thigh and with Dr. Paterson's diagnosis. Impairment for this condition is rated as 4%



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of total based upon the recommendations of the AMA guides section 3.2K for peripheral nerve injuries on page 88 and 89 of the 4th edition. The impairment should be viewed with due caution because of the predominantly subjective aspects and the differing opinions expressed by the attending physicians and consultants.

The matter was next considered by a Disability Awards Officer, as set out in Memo No. 21. There, the Disability Awards Officer adopted the assessment of 4%, saying the Medical Advisor had considered the loss of sensation and painful symptoms. Apparently the Disability Awards Officer saw it as unnecessary to consider whether a further award should be made for subjective complaints, even though Section 39.01 of the Rehabilitation Services and Claims Manual suggests that doing so lies exclusively within the province of the Disability Awards Officer, not the Disability Awards Medical Advisor.

In his report, Dr. van Rijn said Ms. Dias had a disorder of two superficial nerves involving the lower leg, mainly the lateral cutaneous nerve of the thigh as well as the intermediate cutaneous nerve of the thigh. He also considered it likely she had a neuroma in and around the right groin area and possibly a neuroma in a branch of the femoral nerve also accounting for altered sensation. In Dr. van Rijn's view, the worker's complaints could be classified as a "neuralgia" and it was the pain associated with nerve irritability that resulted in disability and not the sensory loss per se. Dr. van Rijn had resort to the American Medical Association "Guides to the Evaluation of Permanent Impairment" (4th edition), as did the Board Medical Advisor. Dr. van Rijn considered the problems involving the femoral cutaneous nerve would result in an impairment rating of 4% of total and he suggested that "some percentage" had to be added for the intermediate cutaneous nerve. He thus concluded that 4% was too low an assessment, with 8% representing the upper end of the range, and the most reasonable assessment falling at 6%. We have looked at the AMA Guides and we note that this is an area which does not lend itself to ready assessment and the Guides themselves suggest that two or more examiners should agree on an appropriate assessment. We do not have the luxury of such an agreement in this case and we are somewhat left to our own devices.



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We have decided to adopt the opinion of Dr. van Rijn and to fix the level of disability at 6%. We are persuaded to that conclusion by the fact that Dr. van Rijn considered the involvement of two nerves, rather than one, the injury to both of which we accept as attributable to the compensable injury. We are influenced as well by the fact that Ms. Dias has genuine complaints of pain which are substantial and disabling.

Conclusion

The worker's appeal is allowed to the extent outlined above and the file is returned to the Disability Awards Department of the Board.

We understand Ms. Dias incurred a disbursement for Dr. van Rijn's report and she is entitled to recover same to the extent permitted under Section 7 of the Workers Compensation Act (Review Board) Regulation.

Ronald H. Bohlin,
Vice Chair.

Kevan G. Johnson,
Member.

Earl A. Simm,
Member.

RHB/ny



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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



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DISTRIBUTION LIST

These findings are sent to the following:

Ms. Maura Dias
587 Pilot Street
Prince George, B.C. V2M 5H9
(the worker)

Woodward's Stores Ltd.
Attention: Brian Cassidy
20th Floor - 401 Bay Street
Toronto, Ontario M5H 2Y4
(the employer)

Mr. Dick Byl
#900 - 550 Victoria Street
Prince George, B.C. V2L 2K1
(the worker's representative)