DATE: May 22, 1991

TO: ALL WCAT STAFF

SUBJECT: DECISION NO. 452/90

Consequences of injury (iatrogenic illness) (treatment) - Benefit of the doubt.

The worker underwent surgery for a compensable inguinal hernia in 1971. He had a number of further surgical procedures at the same site over the years. In 1987, the worker underwent surgery for inguinal nerve entrapment. The worker appealed a decision of the Hearings Officer denying entitlement for the 1987 surgery.

It was possible that the nerve entrapment occurred during one or more of the surgeries. Applying the benefit of the doubt, the Panel found that the 1987 operation was a sequela of the 1971 hernia operation. The appeal was allowed. [9 pages]

PANEL: Hartman; Fox; Preston

DATE: 14/05/91

WCAT Decisions Considered: 900/87 refd to
This appeal was heard on June 15, 1990, by a Tribunal Panel consisting of:

R.E. Hartman: Vice-Chairman,
K.W. Preston: Member representative of employers,
S. Fox: Member representative of workers.

Post-hearing work was completed on November 29, 1990.

THE APPEAL PROCEEDINGS

The worker is appealing a decision of N. Ranta, Hearings Officer, dated October 4, 1989, which denied him entitlement to temporary total disability benefits, from March 16, 1986, to February 19, 1987, for a right groin condition which the worker claimed was causally related to a compensable accident on July 13, 1971.

The worker was present and was represented by D. Paolini, Office of the Worker Adviser. The employer was no longer in business.

THE EVIDENCE

The Panel had before it the Case Description materials prepared by the Tribunal Counsel Office which were entered as Exhibit #1. Exhibit #2 was a letter from the worker's family doctor, Dr. Dilisi, dated June 9, 1987.

The Panel heard sworn testimony from the worker who was questioned by his representative and the Panel.

Subsequent to the hearing, the Panel sought clarification from the treating specialist, Dr. Keresteci, with respect to the inter-relationship of the numerous surgeries performed in the worker's groin area. The Panel also requested clarification from Dr. Dilisi, the family doctor, of the worker's condition in the spring of 1986. Dr. Keresteci responded in a letter to the Tribunal Counsel Office dated September 5, 1990. A letter, dated November 6, 1990, from Dr. Stefou, the doctor who took over Dr. Dilisi's practice was received. Both letters were forwarded to the worker's representative and written submissions were received in a letter dated November 15, 1990.

THE NATURE OF THE CASE

The worker was employed as a labourer with the accident employer. On July 13, 1971, he was lifting a cement slab weighing approximately 75 to 80 pounds when he felt extreme pain in the right side of his lower back. A
report dated July 13, 1971, from his family doctor, Dr. Dilisi, gave a diagnosis of "acute back spasm with disc degeneration".

Following the 1971 back injury, the worker underwent a routine right inguinal hernia repair on November 15, 1971. He underwent further surgery in the groin area on July 7, 1972, November 29, 1972 and March 4, 1982. On March 19, 1986, the worker had further surgery in the same area and again on February 1, 1987.

The worker received temporary compensation benefits for various periods over a 16 year period from July 13, 1971, to October 6, 1987. The last period paid prior to the one in question was from March to October of 1982. No further benefits were then paid until the worker contacted the WCB in May 1987 claiming temporary total disability benefits subsequent to surgery of March 19, 1986, and January 27, 1987.

The issue for the Panel is whether or not the lost time subsequent to March 1986 and February 1987 was compensable. The worker submits that he was forced to stop working in March 1986 due to right groin pain which was not alleviated until the surgery for nerve entrapment in February 1987.

THE PANEL'S REASONS

The Hearings Officer accepted the medical opinion of the WCB's Dr. Macfarlane that the 1986 and 1987 surgeries were non-compensable. The Hearings Officer felt Dr. Keresteci in a letter dated November 4, 1987, as negated a causal relationship between the original right inguinal hernia repair and the surgery on February 19, 1987.

The issues in this appeal are primarily medical and involve a review of the worker's compensable condition and subsequent surgeries between 1971 and 1987. Before reviewing the medical evidence, the Panel will deal with the evidence given by the worker at the hearing.

(i) Worker's testimony

The worker testified that the pain in the groin area did not completely resolve after the 1971 hernia operation and that he soon had another operation in 1972. Since 1972, he has worked at a car wash, drying cars but continued having problems. He went to his family doctor, Dr. Dilisi, who prescribed pills. Dr. Dilisi was the worker's family doctor since 1964. He stated that he occasionally stayed home from work for a couple of weeks and returned when he "felt better". Although he said he stayed home frequently, he did not apply for WCB benefits for this lost time. He said that he thought this was the responsibility of his family doctor.

In March 1986 a scar, about the size of a lentil, in the left groin area bothered the worker. He also had pain in the right side of his groin and he said that it was this pain that caused him to lay off. He said that the pain on the left side was never disabling and went away after the operation on that side in March 1986.
The Panel notes the worker was hospitalized from March 18 to March 26, 1986, for a non-compensable left hydrocelectomy. It was not clear from the worker's testimony whether a period of recovery from this surgery, whether minor or not, was required.

Dr. Keresteci, in a report dated November 4, 1987, stated that pain in the right side of the groin had recently returned to a mild degree. The worker said that this was only for a very short while and it then went away again. He has returned to work at the car wash with no particular problems. Generally speaking, the worker says he feels much better both in his back and in his groin. He said that the last time he saw Dr. Keresteci was over a year prior to the hearing. He recalled being told by Dr. Keresteci that the cause of the 1987 operation was a "couple of nerves tangled with stitches inside".

After the operation on the right side in February 1987, he was off work until February 1988. In the worker's mind, all of his operations were hernia-related.

(ii) Medical background

Medical documents report complaints of lumbosacral pain and tenderness in the right groin and right testicle area in the period 1971 to 1987. The following is a list of the surgical procedures performed on the worker's groin area in the period from 1971 to 1987:

November 15, 1971: Right inguinal hernia repair performed by Dr. McIntyre.

(This surgery resulted in the initial incision known as the "1971 incision.)

July 7, 1972: Right hydrocelectomy (scrotal incision) and left inguinal hernia repair (left side incision) performed by Dr. Colapinto

November 29, 1972: Epididymectomy and spermatic cord repair performed by Dr. Colapinto

(entry through 1971 incision)

March 4, 1982: Exploration of right testes and spermatic cord repair performed by Dr. Colapinto.

(entry through 1971 incision)

March 19, 1986: Left hydrocelectomy and excision of left testicular mass performed by Dr. Shaikh (scrotal incision)

January 27, 1987: Right inguinal nerve block injection performed by Dr. Keresteci.
February 19, 1987: Release of right inguinal nerve entrapment by Dr. Keresteci (entry through 1971 incision)

(iii) Entitlement granted by WCB

Initial entitlement from the 1971 injury was granted for low back pain. The 1971 right inguinal hernia repair was also considered compensable by the WCB as resulting from the 1971 injury. The 1972 left inguinal hernia repair and the 1972 and 1982 spermatic cord repair were not considered compensable by the WCB. (Initial determinations by the WCB were that both the 1972 and 1987 surgeries were compensable.)

In March 1982, the worker claimed lost time based on an ongoing back condition. Because of the lack of continuity from 1971 to 1982, the WCB concluded that worker's back condition in 1982 was due to the underlying disc degeneration and not the accident in 1971. This decision was upheld by a separate Panel of this Tribunal in Decision No. 900/87. That Panel concluded that the worker's back discomfort in 1982 neither accelerated nor aggravated the natural progression of the worker's underlying degenerative disc disease which was the significant contributor to the worker's subsequent low back disability.

In 1987, the worker claimed entitlement for the lay off in 1986 because of an increase in pain in his low back and groin. The WCB concluded that neither the low back problem in 1986 and 1987 nor the groin condition in 1986 and 1987 was related to the 1971 accident.

The worker made no claim at the hearing for the back or a left groin condition, saying it was non-symptomatic and not disabling from March 1986 to February 1987. At issue before the Panel is solely the compensability of the worker's right groin condition which led to surgical release of the right inguinal nerve on February 19, 1987.

(iv) WCB view of relationship of 1987 surgery to 1971 accident

The Hearings Officer relied on Dr. Macfarlane, who stated his opinion of the causal relationship in Memorandum #122 dated April 28, 1988:

[The worker] was aged 38 at the time of injury July 13, 1971. He was working as a labourer and after lifting some slabs, developed pain in the right groin. Dr. Dilisi could not find a hernia. He was referred to Dr. McIntyre who saw him October 29, 1971, and felt that he had a direct right inguinal hernia. November 15, 1971 a routine hernia repair was carried out. The patient continued to complain of pain...in the scrotum...[which started in the testicle and radiated around to the back].

...[The worker] came under the care of the late Dr. Vince Colapinto. Apparently the resident felt he had a hydrocele and tried to aspirate this. Dr. Colapinto also felt that the right testicle was hanging too low.
Therefore surgery was carried out in July 1972 and you will note that surgery had absolutely nothing to do with this patient's right inguinal repair. He described scarring and reaction in the coverings of the spermatic cord and the cord coverings were transected completely in a circumferential manner in order to divide any nerve endings. ...

The scarring around the spermatic cord had nothing to do with the hernia repair. It would not cause pain. The hydrocele was small and certainly not related to his industrial accident. It, likewise, would not cause pain. Because his right testicle was hanging low, it would have nothing to do with his hernia repair.

Therefore, he should not have had this surgery [in 1972] considered as part of his hernia repair entitlement.

Dr. Macfarlane goes on to draw attention to Dr. Colapinto's subsequent surgeries, on November 29, 1972, and March 4, 1982, which Dr. Macfarlane felt "did nothing to the hernia site". Dr. Macfarlane continues:

We then have Dr. Bohnen seeing the patient December 23, 1986. He says there is no evidence of an inguinal hernia but he might [sic] a varicocele. He refers the patient to Dr. Keresteci. You will note in his report of January 11, 1987, he...mentions that the back pain is radiating to the groin. He thought he might have a trapped nerve and so on January 27, 1987, he injected Marcaine into the area around the right pubic tubercle. This apparently gave the patient relief of pain. Now the only reason I can think of that would fit with this would be that the patient had periosteitis of the right pubic tubical since I am not aware of any nerves and certainly not the ilioinguinal nerve that would be in that area. ...

In any case, they do go on to explore the right inguinal area again and the operation note is dated February 19, 1987. To my way of thinking this has been a fishing expedition. I have no idea of what they are looking at or what they cutting. Obviously they have cut something which they should not have cut. We have no idea whether they have ever found any nerve tissue. Presumably they did send tissue to pathology but we do not have any pathology report.

Dr. Macfarlane concluded that there was "no evidence over the years that [the worker had] a trapped right ilioinguinal nerve". The area was explored several times but the area of the hernia repair was "never touched". Therefore, it would be "very difficult to understand why the ilioinguinal nerve would start to be trapped in 1987 some 16 years after his surgery".

Based on this opinion, and Dr. Keresteci's statement in a letter dated November 4, 1987, that he "had to revise (his) original opinion that this was
a right nerve entrapment", the Hearings Officer denied a causal relationship between the 1971 compensable injury which led to the 1971 hernia repair and the nerve entrapment in February 1987.

(v) Dr. Keresteci's opinion of a relationship between the 1987 surgery and 1971 accident

The Panel asked Dr. Keresteci, by letter dated July 11, 1990, to clarify his opinion regarding the February 15, 1987, and whether he felt nerve entrapment was present in 1986. Dr. Keresteci responded:

I have reviewed my records on [the worker's] case and the summary that you had sent me is quite correct in that in November of 1971 he had a right inguinal hernia repair, which was the first incision. You are correct that the further incisions at the same site were not for hernia repair but were made through the same incision and it did involve opening up the inguinal canal to do the surgery, either on the epididymis or the spermatic cord in 1972 and in 1982 a repeat operation for exploration of the right testis (sic) and the spermatic cord. In as far as scarring of the region is concerned, the 1972 and 1982 operations would have the same affect (sic), despite the fact that they were not hernia surgery. ...

When he came under my care, having been referred by Dr. J. Bohnen, in late 1986 and early 1987, I thought that his inguinal and scrotal pain on the right side could be due to a scarring and entrapment of the nerves in that region irritating to give him the pain. To test this theory a cord block was undertaken and this gave him relief during the duration of the local anaesthesia. Based on this, in February of 1987, through the same incisions, now the fourth time, the inguinal canal and the cord were explored and the nerve fibres were transected and excised. The tissue sent to the Pathologist confirmed that there were indeed nerve fibres. Gradually after this, the patient had relief of the right groin pain and although I may have expressed some doubt whether the procedure was going to be of benefit in his pain relief, I feel that it was demonstrated that it was indeed a nerve entrapment problem.

It is, therefore, my view that the right ileo-inguinal nerve and perhaps right genito-femoral nerve entrapment was present in 1986 and I also feel that this was causing him disability until the date of surgery.

It is, of course, impossible to say whether it was the 1971 hernia repair, which I understand is compensable, or the subsequent 1972 and 1982 incisions that created this situation. Nevertheless, since both operations were performed for the relief of the same kind of pain, one can assume that the condition of entrapment occurred prior to
1972, namely in the 1971 operation. This is difficult to establish, however, at this time.

In a letter dated November 15, 1990, the worker's representative submitted that the worker was at all times consistent with respect to the nature of his disability in March 1986. While surgery was performed in the left groin area, it was increasing pain in the right groin area that was disabling. The worker's representative also submitted that the lack of attention to left groin problems by the family doctor "substantiates the trivial nature of [the worker's left groin problems]" and that he was forced to stop work in March of 1986 due to right, not left, groin pain. The worker's adviser interprets the letter from Dr. Stefou as giving "no reasons" for the visits between September 14, 1987, and May 25, 1989. With respect to the continuing reports of groin pain after February 1987, the worker's representative states that these were more likely than not due to lower back pain and "as such, are not relevant to deciding the issue at hand". It was also noted that the worker had been able to work continually in the same type of job from 1986 to the present with the exception of the lost time prior to surgery in February of 1987.

Dr. Stefou reported that Dr. Dilisi's notes confirmed that on June 26, 1986, the worker was complaining of "back as well as the right groin pain which most definitely interfere with his duties working in a car wash". Contrary to the worker's testimony of gradual improvement from 1987 to date, Dr. Stefou relayed complaints by the worker of right groin pain in August, September, and October of 1987, six times in 1988, four times in 1989, five times in 1989 and again in 1990. This suggests the surgery in 1987 did not have as dramatic an effect as the worker claimed. However, given Dr. Keresteci's clarification and the pathologists' reports, these ongoing complaints, while they may cast doubt on, do not refute the diagnosis of nerve entrapment.

(vi) Conclusion

The main issue for determination is whether or not the release of the right inguinal nerve entrapment in February of 1987 was in any way related to the compensable accident and its sequelae. Entitlement following the February 1987 operation is not an issue as the worker has received benefits from February to September 1987. In summary, the worker is claiming that the lost time from 1986 to 1987 was due to an undiagnosed nerve entrapment.

As stated, the compensable accident was a back spasm. Subsequent entitlement in the claim included a right inguinal hernia repair. If the nerve entrapment in February 1987 was in any way related to the hernia repair, it can be said to be compensable as resulting from the sequelae of the compensable accident.

On the one hand, the Panel notes that the worker's symptom of right groin pain continued after February 1987, suggesting that the 1987 operation was not the correction of a misdiagnosis. On the other hand, the Panel has heard that the worker has been able to work since the 1987 operation and maintains that there has been a diminution of symptoms. Given the repeated surgeries
entering through the compensable 1971 incision in the area of the inguinal canal, it is possible to conclude that nerve entrapment occurred in one or more of these surgeries. Which one is unknown. Weighing Dr. Macfarlane's opinion with that of the treating neurologist, Dr. Keresteci, the Panel feels that the concerns raised by Dr. Macfarlane have been addressed sufficiently by the clarification from Dr. Keresteci.

In the Panel's view, the medical evidence is such that a conclusion can be drawn either way. By statute, the worker is given the benefit of the doubt and the Panel concludes that the February 1987 operation was related to the 1971 hernia operation and sequelae.

THE DECISION

The appeal is allowed. The WCB is directed to determine the nature of any benefits, in the period March 1986 to February 1987, resulting from this decision.

DATED at Toronto, this 14th day of May, 1991.