

WORKERS COMPENSATION COMMISSION



STATEMENT OF REASONS FOR DECISION OF THE APPEAL PANEL IN RELATION TO A MEDICAL DISPUTE

Matter No: M-007185-2007
Appellant: Roxana Starr
Respondent: National Australia Bank
Date of Decision: 12 June 2008

Appeal Panel:
Arbitrator: Mr R O'Moore
Approved Medical Specialist: Dr J. Parmegiani
Approved Medical Specialist: Dr B. Parsonage

BACKGROUND TO THE APPLICATION TO APPEAL

1. On 2 April 2008 Roxana Starr ('the Appellant') made an application to appeal against a medical assessment ('the appeal') to the Registrar of the Workers Compensation Commission ('the Commission'). The medical assessment was made by Dr R. Kaplan, an Approved Medical Specialist ('the AMS') in a Medical Assessment Certificate (MAC).
2. The Respondent to the Appeal is National Australia Bank ('the Respondent'), which is self insured.
3. The matter involves a claim to entitlement under the workers compensation legislation (the *Workers Compensation Act 1987* ('the 1987 Act') and the *Workplace Injury Management and Workers Compensation Act 1998* ('the 1998 Act')). The WorkCover Medical Assessment Guidelines ('the Guidelines') set out the practice and procedure in relation to appeals to Medical Appeal Panels under section 327 of the 1998 Act.
4. The Appellant claims, in summary, that the medical assessment by the AMS should be reviewed on the following grounds (s 327(3) of the 1998 Act):
 - the medical assessment certificate contains a demonstrable error.
5. The Registrar is satisfied that at least one of the grounds for appeal is made out in accordance with section 327(4) of the 1998 Act and the Registrar has referred the Appeal to this Appeal Panel ('the Panel') for review of the original medical assessment.
6. The Appeal was made within 28 days of the date of the medical assessment.

PRELIMINARY REVIEW

7. The Panel conducted a preliminary review of the original medical assessment in the absence of the parties and in accordance with the Guidelines.

8. As a result of that preliminary review, the Panel determined that it was not necessary for the worker to undergo a further medical examination because there was ample medical history and assessment for both the Appellant and Respondent's specialists as well as Dr R. Kaplan's MAC. The critical issue relates to the 'deductibility' component of the assessment.

EVIDENCE

Documentary Evidence

The Panel has before it all the documents that were sent to the AMS for the original assessment and has taken them into account in making this determination.

Medical Assessment Certificate

9. The Panel reviewed the parts of the medical certificate given by the AMS relevant to the history taken and assessment of the Appellant's Post Traumatic Stress Disorder.
10. The Panel is satisfied that Dr Kaplan's methodology for assessment of that condition is adequate (including his PIRS Rating Form) and complies with the WorkCover Guidelines for the Evaluation of Permanent Impairment.
11. It is the Panel's view that the aggregate score of 22% whole person impairment is justified on the medical evidence before it, and that there is no valid reason to upset Dr Kaplan's assessment on aggregate scores in his PIRS Rating Form. The finding of a chronic disorder is justified on the history and assessment, however the broad statement of remission, if interpreted as a substantial or full remission is not justified on the ratings and functioning found by Dr Kaplan in his assessment.
12. In any event, he makes a finding of 22% including his assessment of remission, before the reduction/deduction.
13. The Median Class value should be Class 3 on the aggregate and functioning assessment Form.
14. It is noted that the Parties' submissions focus on the consequences of the reduction and deduction made by the AMS in relation to his finding that the Appellant's Somatoform Disorder, manifested after the Thailand incident in August 2005, is not a work-related condition and therefore should involve a deduction from the PTSD assessment at 22% WPI. This subject is addressed and resolved in the Findings and Reasons below.
15. The AMS finds in his MAC that he should make a deduction of 50% for the Somatoform Disorder NOS. He assesses that condition as a condition not related to work-injury, but related to an incident in August 2005 in Thailand as detailed in the narrative of his MAC, and in the reports of the other medical experts relied upon by the Parties.

The Medical Evidence for the Parties

16. The medical evidence is not repeated here in full, however, in summary the relevant medical evidence of the Applicant and Respondent provided the histories given by the Appellant, and assessments and prognoses made by the experts, over a number of years following the injury, and more recently from Dr Synott in July 2006, Westmore in October 2006, Dr Prior in March 2007, Ms. Gillies in May 2007, and Dr Rowe in July 2007.

That evidence is adequately described in Dr Kaplan's MAC at pages 10 and 11, where there appears to be a general consistency of presentation by the Appellant in those histories, as well as the diagnosis of her psychiatric condition. Dr Rowe takes the view that the Appellant's then current condition was due substantially to the Bangkok Airport incident in August 2005.

There is a common view from those experts that the Appellant at the times of those examinations suffered from Post-Traumatic Stress Disorder (PTSD) of a mild to mild chronic status.

Ms V. Moodley, psychologist does not find that condition established under DSM-IV-TR.

DECISION MADE AFTER PRELIMINARY REVIEW WITHOUT HOLDING AN ASSESSMENT HEARING

17. The Panel determined that the requirement for an Assessment Hearing. Was not justified, nor was one requested by the Parties

SUBMISSIONS

18. Both parties made written submissions, the Appellant's undated, but attached to the Appeal Application, and the Respondent dated 24 April 2008.
19. The Applicant's submissions focus on the reduction/deduction issue (11% WPI).
20. The Respondent submits that a deduction for the Somatoform Disorder NOS is justified for the reasons given, based on the WorkCover Guides ;
 - (a) requiring a finding `...that results from the injury...` (page 3 of the Guides).
The Panel is satisfied, as was the AMS in his preliminary finding, and most of the medical experts, that the PTSD condition is work related. That justifies an assessment without deduction on that ground
 - (b) and considering `co-morbid features....and determining whether they are `directly linked to the work-related injury` or `whether they were pre-existing or unrelated conditions` (Chapter 11 psychiatric and psychological disorders).

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FINDINGS AND REASONS

21. The role of the Appeal Panel was considered by the Court of Appeal in the case of Campbelltown City Council v Vegan [2006] NSWCA 284. By reason of the decision in the Court of Appeal, the Appeal Panel has the power and duty to identify and correct errors falling within the grounds of appeal specified under section 327(3) of the 1998 Act.
22. If the Appeal Panel receives additional relevant information pursuant to section 328(3) of the 1998 Act, it may have regard to that fresh evidence in determining whether any of the specified grounds of appeal in section 327(3) of the Act are made out. To the extent that the Appeal Panel relies on this additional relevant information, the Appeal Panel is exercising its original rather than appellate jurisdiction.
23. The Court also held that the Appeal Panel is obliged to give reasons for its decision. Where there are disputes of fact the reasons must contain findings of fact. Where more than one conclusion is open it will be necessary to explain why one conclusion is preferred. On the other hand the reasons need not be extensive or provide detailed explanation of the criteria applied by the medical professionals in reaching a professional judgement.
24. Though the power of review is far ranging, it is nonetheless confined to the matters which can be the subject of appeal. Section 327(2) of the 1998 Act restricts those matters to the matters about which the AMS certificate is binding
25. In this matter the Registrar was satisfied that, on the face of the application and any submissions made to the Registrar, the ground for appeal specified in paragraph 4 has been made out. .
26. The Panel is satisfied that the assessment methodology applied by the AMS in making a reduction/deduction is a substantial error of logic in [MSOffice 1] the assessment process.

27. The primary assessment by the AMS as to PTSD is substantiated on the history taken and assessment made by the AMS, and his findings on that issue are validated in his reasoning in the MAC.
28. Therefore his primary assessment of 22% whole person impairment arising out of work-related PTSD should stand.
29. The Panel finds no reason to disturb that finding on the history (supported by the consistent preceding medical histories taken) and the methodology adopted by the AMS in his assessment of the permanent impairment arising from that condition on the PIRS Ratings.
30. The Panel is satisfied that there were no co-morbid features beyond the criteria and symptoms established in the finding of PTSD and that the rare condition of Somatoform Disorder NOC did not co-exist with the diagnosed PTSD condition in the Appellant at the time of the examination by the AMS.

That is medically unsustainable, and the symptoms displayed by the Appellant are not due to any other mental disorder. The Diagnostic and Statistical Manual of Mental Disorders states that a diagnosis of Somatoform Disorder cannot be made where somatic (physical) symptoms are a manifestation of [MSOffice 3] another psychiatric disorder such as anxiety disorder or mood disorder [MSOffice 4] [MSOffice 5] .

It is noted that there is no such finding of Somatoform Disorder NOC by any other medical expert for either Party.

The Panel also finds on its own view that that there is no probative evidence from any history or other assessment by the Parties` medical experts, or in the assessment by the AMS, to justify a finding of a pre-existing condition.

That is denied consistently by the Appellant throughout the histories given.

Therefore, on those findings by the Panel, the submission by the Respondent that there was an unrelated psychiatric or psychological condition cannot succeed.

31. For these reasons, the Panel has therefore determined that the Medical Assessment Certificate given in this matter should be revoked, and a new Medical Assessment Certificate should be issued. The new Medical Assessment Certificate is attached to this statement of reasons.

DECISION

The Medical Assessment Certificate given in this matter should be revoked, and a new Medical Assessment Certificate should be issued. The new Medical Assessment Certificate is attached to this statement of reasons.

I CERTIFY THAT THIS IS A TRUE AND ACCURATE RECORD OF THE REASONS FOR
DECISION OF THE APPEAL PANEL CONSTITUTED PURSUANT TO SECTION 328 OF
THE *WORKPLACE INJURY MANAGEMENT AND WORKERS COMPENSATION ACT* 1998.

REGISTRAR



WORKERS COMPENSATION COMMISSION

APPEAL PANEL MEDICAL ASSESSMENT CERTIFICATE Injuries received after 1 January 2002

Matter No: WCC M-007185-2007
Applicant: Roxana Starr
Respondent: National Australia Bank

This Certificate is issued pursuant to section 328(5) of the *Workplace Injury Management and Workers Compensation Act 1998*.

This matter was referred by the Commission to Dr [R. Kaplan](#) an Approved Medical Specialist who issued a Medical Assessment Certificate dated [7 March 2008](#). The Applicant worker lodged an appeal against appealed against this medical assessment on [2 April 2008](#).

The Appeal Panel revokes the Medical Assessment Certificate of Dr [R. Kaplan](#) and issues this new Medical Assessment Certificate as to the matters set out in the Table below:

Table - Whole Person Impairment (WPI)

Body Part or system	Date of Injury	Chapter, page and paragraph number in WorkCover Guides	Chapter, page, paragraph, figure and table numbers in AMA5 Guides	% WPI	% WPI deductions pursuant to S323 for pre-existing injury, condition or abnormality	Sub-total/s % WPI (after any deductions in column 6)
Psychiatric.	10 October 2002	Chapter 11 53-61 (MS Office 1)	N/A	22	0	22
Total % WPI (the Combined Table values of all sub-totals)						22

The above assessment is made in accordance with the WorkCover Guides for the Evaluation of Permanent impairment for injuries received after 1 January 2002

A statement of reasons for the medical assessment is attached.

Mr. R O'Moore
Arbitrator

Dr J. Parmegiani
Approved Medical Specialist

DR B. Parsonage

Approved Medical Specialist

12 June 2008

I CERTIFY THAT THIS IS A TRUE AND ACCURATE RECORD OF THE MEDICAL ASSESSMENT CERTIFICATE OF THE APPEAL PANEL CONSTITUTED PURSUANT TO SECTION 328 OF THE *WORKPLACE INJURY MANAGEMENT AND WORKERS COMPENSATION* ACT 1998

REGISTRAR