



COVERED CASES

Case Snippet

**MILLER v WORKCOVER AND SUN ALLIANCE WORKERS
COMPENSATION (SA) LTD (ROYAL HOTEL)**

Decision of WCT

[2000] SAWCT 141

His Honour Deputy President McCouaig was required to consider whether a rehabilitation program (“RP”) can be implemented at the same time as a rehabilitation and return to work Plan (“RRWP”).

The worker in this case had suffered two compensable right knee injuries in 1995. In September 1998 the Claims Agent withdrew vocational rehabilitation which had been directed towards returning the worker to his pre-injury industry on the basis that the worker’s disability was permanent and prospects of a return to work were minimal. A Notice of Dispute was lodged in respect of this decision. Two further RRWP’s (numbers 13 and 14) were established but did not include retraining as an accountant – a proposal that had been put forward by the worker’s rehabilitation adviser. The worker also disputed these plans.

The worker also sought to have his retraining proposal incorporated into either a RP or a RRWP (in addition to the one already in force).

The Judicial Determination addressed two preliminary questions of law namely:

1. Can a worker require that a RP be established once a RRWP has been created?
2. Can a worker require a RP or RRWP to be established when:
 - (a) there have already been a series of plans; and

- (b) previous plans have already identified suitable employment that a worker has a reasonable prospect of obtaining for the purposes of Section 35?

Deputy President McCouaig considered and applied the decision of Dunstan v WorkCover. In that case the Full Bench held that a RP differs from a RRWP. It was noted there that the Tribunal would not be likely to require the establishment of a RRWP where a RP with reasonable conditions is in place. However they did not preclude the possibility of an RP and an RRWP co-existing.

Here, His Honour held that a worker can seek a review of a refusal to establish a RP notwithstanding that a past or present RRWP had been created. Further a worker can seek a review of a refusal to establish an RP or an RRWP notwithstanding that there has already been a series of RRWP's or that a previous RRWP has already identified suitable employment for the purposes of Section 35 of the Act.