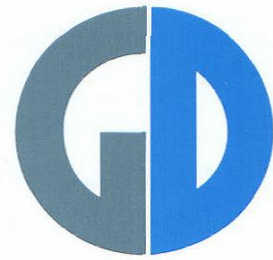


Gun & Davey

Covered



Vol 1, Issue 12 – October 1998

COVERED CASES

**** STOP PRESS ****

MITCHELL -v- WORKCOVER CORPORATION (T W INGHAM & SONS PTY LTD/MMI)

Decision of the Full Bench of the Workers Compensation Tribunal

(JD60/1998)

Catchwords:

Application of Regulation 16a.

Facts:

The worker was 57 years of age and commenced work as a plasterer in April 1991.

In discharging his duties he developed pain in the left elbow which incapacitated him for work. A claim for compensation was submitted and accepted. The relevant date of injury for the purposes of the Act was 21 May 1991.

On 15 April 1994 the Corporation determined his Section 43 lump sum entitlement at 20% loss of function of the left arm at or above the elbow.

The worker returned to work but as a result of his duties and his compensating for the left arm disability, he sustained a similar injury to his right arm. A claim for compensation was submitted and accepted. The relevant date of injury being 23 September 1993.

It was not in dispute that the worker suffered a 12.5% loss of function of the right arm at or above the elbow as a consequence of the second injury.

Issue:

Does Regulation 16a apply in calculating the worker's Section 43 lump sum payment for the second injury?

Held:

Yes. “[I]rrespective of the fact that the disabilities were suffered as a consequence of separate events/trauma,”

Regulation 16a applied.

The purpose of Regulation 16a was stated to be -

“to reduce the amount of money that would otherwise be payable to a disabled worker who is entitled to compensation in respect of two or more disabilities to which the Schedule applies”.

If clause 5 of the Third Schedule had intended Regulation 16a to apply only to multiple disabilities arising from the *same* event or trauma, it would have said so.

Commentary:

Regulation 16a is to be applied in the normal way to calculate the *percentage* of the prescribed sum which each disability, or the disability being assessed, generates. The *dollar value* of that percentage is then calculated by reference to the prescribed sum for the year in which the disability (resulting in permanent disability) was sustained.

Where a Section 43 assessment is to be made on any claim, the compensating authority must now identify all past Section 43 payments (if any). Where there are multiple claims to be assessed relating to disabilities suffered in different years, we recommend (subject to any direction to the contrary from WorkCover) that the assessments be made chronologically.

This decision, although unexpected, should make the “bean-counters” at WorkCover very happy indeed!