

Gun & Davey

Covered



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COVERED CASES

PETRIC v WORKCOVER CORPORATION **(CONSULTING AND DEVELOPMENT ENGINEERS)**

Decision of the Workers Compensation Tribunal – Deputy President Gilchrist

([2000] SAWCT 108)

Catchwords:

Application of Section 35(2) to the initial determination of a claim.

Facts:

The worker, an engineering estimator, sustained injury to his right knee on 6th February 1996. He resumed work the following day but continued to suffer pain being retrenched two weeks later and remaining unemployed until May 1996. Thereafter he was employed with B & R Civil for a couple of months, City of Noarlunga for 13-15 months, City of Mitcham for 11 months and City of Port Adelaide/Enfield for 3 months.

Although undergoing surgery on his knee in December 1996, he continued to experience pain and lodged a Claim for Compensation on 23rd September 1998 some 31 months after the initial injury

The Agent (Mercantile Mutual Insurance (SA Workers' Compensation) Limited) rejected the worker's claim on the basis that for the period of incapacity sought, the worker was only entitled to the difference between his notional weekly earnings and that which he could earn in suitable employment. Applying the principles contained within Section 35 it was asserted that the worker was capable of working either as a traffic and development officer or a works estimator on a full-time basis. His deemed earnings from such employment exceeded his notional weekly earnings thus providing the worker with a nil entitlement.

Issue:

Is a compensating authority entitled to reject a worker's claim for income maintenance when such a claim is made more than two years after the commencement of the incapacity on the basis that the worker was capable of working in employment that would produce a higher income than the worker's notional weekly earnings?

Held:

The Section 38 review process is directed towards a review of weekly payments actually being made. There is no reason why the principles in Section 35(2) can not be applied to a claim for compensation made more than two years after the commencement of incapacity.

Commentary:

This decision has now paved the way for claims for income maintenance to be rejected or accepted for a lesser amount than 80% of notional weekly earnings on the basis of the two year provisions. Bear this in mind for any claims lodged more than two years after the commencement of an incapacity but be aware that the factual basis must exist before a determination of this type will succeed.