

Gun & Davey

Covered



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COVERED CASES

SANDERSON -v- HOLDEN LIMITED

Decision of the Workers Compensation Tribunal

[2000] SAWCT 29

Catchwords:

Section 43 - where a possibility to improve exists.

Section 36(1)(b) - where a definite diagnosis cannot be made.

Facts:

In 1988 whilst employed as a spray painter, the worker began experiencing symptoms of numbness, tingling and pain in his *right* hand. In June or July 1998 he underwent a carpal tunnel release. The worker recovered and returned to work two weeks later.

In April 1992 the worker obtained employment with Holdens as an assembler. In or about June 1992 he began experiencing symptoms in his *left* hand including pins and needles, numbness and lack of strength. A nerve conduction study confirmed carpal tunnel syndrome. A carpal tunnel release was performed in June 1992. A full return to work on normal duties occurred two weeks later.

Within two weeks of the return to work the worker began experiencing a “popping” sensation in his *left* hand. He remained off work for one month then returned to work on modified duties.

Despite being transferred to a number of different areas due to his disabilities, his symptoms persisted.

The worker consulted his GP who referred him to Dr Fewings and then Dr Saies who performed a carpal tunnel release in July 1996. Symptoms recurred four days post-operatively. Dr Saies diagnosed “failed endoscopic carpal tunnel release” and referred the worker back to Dr Fewings. Dr Fewings conducted nerve conduction studies which revealed “a marginally abnormal study”.

The employer referred the worker to Mr Ghan for medico-legal purposes. Mr Ghan was unable to offer an explanation as to why the worker's complaints had continued and suggested that the worker was fit to return to work. The worker subsequently returned to work in November 1996. He reported difficulties to his employer who then referred him to Mr Randall Sach, a Plastic Surgeon. Mr Sach diagnosed the worker as suffering symptoms of reflex sympathetic dystrophy and suggested further surgery. The employer's solicitor then referred the worker to Dr Cullum who considered that the worker had suffered a significant disability to his right upper limb below the elbow and was not fit for any work. Dr Cullum agreed with Mr Sach that the worker was suffering from a dysfunction of the median nerve.

Subsequently the worker came to be referred to Mr Philip Griffin a Plastic Surgeon who advised that the worker was suffering from quite severe reflex sympathetic dystrophy. He performed an open right carpal tunnel release in March 1997, however the worker did not experience recovery and complained that following surgery he experienced more pain, numbness, sweating and colour change than before. He has not worked since.

In total there were 50 medical reports from almost 20 medical experts! Various diagnoses were offered to explain the worker's continued complaints. These include chronic regional pain syndrome, reflex sympathetic dystrophy, depression and hysterical conversion disorder. Eventually the employer discontinued the worker's weekly payments on the basis that he had ceased to be incapacitated for work as a consequence of the accepted disability. In support of this the employer stated that none of the medical diagnoses could properly explain the worker's continued complaints and it was suggested that the worker must be exaggerating his symptoms.

Issues:

1. Whether or not the worker continues to be incapacitated for work as a consequence of a disability that he sustained in the course of his employment with Holden on 3rd June 1992. (Yes)
2. What, if any, entitlements he has to compensation pursuant to Section 43 of the Workers Rehabilitation and Compensation Act 1986 ("the Act") in respect of any permanent disabilities that might have resulted from such disabilities.

Held:

1. The lack of a specific diagnosis is not sufficient to discontinue a worker's weekly payments where there is evidence of a continuing incapacity.
2. It is not necessary for there to be a definitive diagnosis of a worker's condition nor is it necessary for there to be medical assessments of his permanent impairments for the Tribunal to assess permanent impairment of its own accord. His Honour Deputy President Gilchrist held that the worker had a 90% permanent impairment of the right arm at or above the elbow and a 5% permanent impairment of the left arm at or above the elbow.