



COVERED CASES

Case Snippet

SLEE -v- TRANSFIELD CONSTRUCTIONS PTY LTD

[2001] SAWCT 16

(Sections 35(2)/38)

This recent decision of the Workers Compensation Tribunal produced a successful outcome to a Section 38/35(2) determination and is an excellent example of the benefits of having a comprehensive job description when deeming a worker capable of performing suitable employment as well as the advantage of relying on employment which has been previously undertaken by a worker.

The worker had sustained an injury in 1998 which resulted in a permanent partial incapacity. He was certified fit for permanent modified duties. The pre-injury employer supplied him with supernumerary duties as a safety officer within his medical restrictions until his retrenchment. The worker subsequently found work with a labour hire company, being placed on three separate occasions with three different employers. All knew of his medical restrictions.

The worker applied for ongoing income maintenance which was rejected on the basis he had demonstrated the ability to work as a safety officer. Section 35(2) principles were applied. The worker disputed the determination on the basis that unrestricted work as a safety officer was not suitable work.

Deputy President Judge Parsons found that although the worker's disability precluded him from performing the full range of duties of a safety officer at Transfield, he nonetheless was able to obtain work within his limitations on the open labour market following retrenchment.

Her Honour restated the views of Cox J in *WorkCover Corporation of South Australia v. Warren* (1998) 72 SASR 7 that "suitable employment" referred to in Section 35 will be appropriately identified if:

There is evidence of the existence in the workforce of a particular form of occupation in which the worker could be suitably employed.

“safety officer” was such an occupation. The worker had not rebutted the statutory presumption pursuant to Section 35(2)(c).