

Gun & Davey

Covered



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COVERED CASES

WORKCOVER CORPORATION (LE ROX) -v- THEODOSIOU

Decision of the Workers Compensation Appeal Tribunal

Deputy President Cawthorne

(A22/1998)

Catchwords:

Interpretation of the former Section 36(1A)(b) i.e. Section 36(1)(c)(ii).

Facts:

The worker's last prescribed medical certificate indicated that he remained incapacitated until 17 March 1995. An independent medical examination was arranged with Dr Patel on 28 March 1998 which did not take place.

On 18 April 1995, the compensating authority wrote to the worker indicating that if it did not receive a certificate within the next 10 days, his weekly payments would be discontinued pursuant to the former Section 36(1)(f) and (1A)(a) (which is in essentially the same terms as the current section).

The compensating authority did not receive a certificate within that time and on the 2 May 1995 gave notice to the worker discontinuing his weekly payments.

Issue:

Is Section 36(1)(f) and (1A)(a) a section of strict liability? i.e. is a compensating authority bound to consider extenuating circumstances such as the certificate being produced one day late or having been lost in the post?

Held:

The section is one of strict liability and a compensating authority need not consider extenuating circumstances.

The compensating authority need only prove that a certificate from a recognised medical expert was not received within the time allowed for same.

Commentary:

We consider that a different result may have been arrived at if the compensating authority had a recent medical report on file certifying incapacity or, if the nature of the disability e.g. amputated arm, made it obvious that the worker continues to be incapacitated (see suggestion by DP Gilchrist in Smith JD55/1998).

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