

Gun & Davey

Covered



Vol 1, Issue 15 – June 1999

CASE SNIPPETS

VARSAMIDIS-v-WORKCOVER CORPORATION MMI WORKERS COMPENSATION (SA) LTD (TRANS OCEAN TERMINALS)

(JD34/1999)

In this case Deputy President McCusker considered whether the worker could receive a lump sum pursuant to Section 43 of the Act for loss of total bodily function caused by pain.

The compensable disability occurred when the worker was struck in his stomach whilst operating a forklift. A significant haematoma formed within his spleen and a smaller one in the kidneys. From that time on he suffered fluctuating pain affecting his left trunk. The worker's treating general practitioner provided a report detailing the frequency and intensity of the worker's pain experience and the medication required to dull it. In evidence he said the cyst in his spleen was the major source of the pain and he explained how he used Appendix B of *The Guides to the Evaluation of Permanent Impairment, Third Edition* (revised) ("the Guide") to reach an assessment of 15% of the prescribed sum. The worker was also seen by Mr E Eriksen. He allowed a 7.5% assessment based upon the risk of future trauma but agreed it was a broad value judgment and did not involve any scientific analysis. Mr Eriksen's view was that the entitlement could only be supported if the worker had an impairment that fell into any of the categories expressly appearing in the Guide. As he did not, no assessment could be made.

In argument the Corporation referred to a number of decisions establishing that pain per se is not compensable pursuant to Section 43 and that lump sum compensation is only payable for permanent disability. The Corporation argued that as the worker did not rely on the Third Schedule and could not satisfy the criteria for impairment in any relevant section of the Guide there was no entitlement. The Corporation argued that Appendix B of the Guide was not part of that criteria but instead provided some guidance to the evaluation of how to account for pain in respect of the set criteria. Finally, the Corporation argued that the three step process identified by His Honour Justice Stanley in Irons Engineering Pty Ltd -v- W had not been complied with.

Deputy President McCusker held that it was clear that Parliament intended that all compensable disabilities leading to a loss of bodily function due to the impairment of some part of the body are to be compensable save in the case of those due solely to mental responses.

His Honour held that Appendix B of the Guides enabled him to make an assessment of loss of total bodily function for the impairment of organic pain. He held that the worker's description of his own limitations

and the effect of being afflicted by pain matched the figure of Dr Lister. Therefore he assessed the worker as suffering a 15% loss of bodily function.

Commentary:

The decision has been appealed to the Full Bench of the Workers Compensation Tribunal and is listed for hearing on 11 June 1999. We will advise you of the outcome.