

SHORT SHOTS

Appeal on Jurisdictional Error – Determination of medical dispute by arbitrator

State of NSW v Butler

[LINK TO DECISION](#)

The worker suffered injuries involving both knees with different employers – occurrence of injuries was not disputed. A claim was raised for weekly benefits and lump sum compensation against both employers. Earlier employer disputed liability on the basis that injury in 2006 was only ‘minor’ and worker had ‘made a full recovery’.

The arbitrator made awards against the subsequent employer (State of NSW) for weekly benefits and medical expenses and remitted matter to the Registrar for referral to an AMS to assess WPI that resulted in injury to the left knee in June 2011 and a consequential injury to the right knee. Award made in favour of earlier employer. State of NSW submitted that the determination of permanent impairment resulting from earlier injury was ‘wholly within the province of the AMS’ – Arbitrator stated ‘whether there is a causal connection between an injury and impairment are matters for an arbitrator, not an AMS to decide’.

On appeal, Snell DP found that the dispute regarding the permanent impairment that resulted from the injury in 2006 was a ‘medical dispute’ which in the absence of assessment by an AMS could not be determined by the Commission. The medical dispute relating to the injury in 2006 was required to be referred to an AMS – entry of award in favour of earlier employer involved – jurisdictional error.

The arbitrator’s Certificate of Determination was revoked and the matter remitted for re-determination by a different arbitrator.

Decision Number: [2017] NSWWCPCD 47
Decision date: 3 November 2017
Matter No: A1-1508/17
Decision Maker: Snell DP, Workers Compensation Commission

Appeal on s38 Entitlement – Workers with highest needs

Hee v State Transit Authority of NSW [2018] NSWWCPCD 6 (26 February 2018)

[LINK TO DECISION](#)

Consideration of special provisions for workers with highest needs (greater than 30% WPI) and whether benefits are payable under s38A where there is no other entitlement to weekly compensation payments.

Held: Not entitled to additional benefits under s38A merely by virtue of being a worker with highest needs who suffers an incapacity for work – must also establish that there is an amount of weekly compensation that is payable pursuant to ss34-38 that is less than \$788.32.

Appeal dismissed.

Decision Number: [2018] NSWWCPCD 6
Decision date: 26 February 2018
Matter No: A1-2051/17
Decision Maker: Keating P, Workers Compensation Commission

Appeal out of Time – Liability dispute v medical dispute

Vaughan v Secretary, Department of Education

[LINK TO DECISION](#)

Claim for lump sum compensation for injury to both shoulders. Insurer accepted injury to right biceps but denied liability for injury to either shoulder. Arbitrator found worker’s statement and histories contained in the medico-legal reports were not consistent with contemporaneous evidence and held that the worker had failed to discharge the onus of proof.

Appeal lodged outside the prescribed time frame – no exceptional circumstances upon which the appeal could be allowed as failure to lodge stemmed from an error in procedural non-compliance and did not constitute exceptional circumstances (within the meaning of rule 16.2(12) where to lose the right to appeal would work demonstrable and substantial injustice).

Considering the merits of the grounds of appeal – would not succeed even if time were extended.

The determination on ‘injury’ was within the jurisdiction of the Commission as required prior to referral to an AMS. The issue between expert witnesses about reliability of MRIs did not constitute a ‘medical dispute’ within the meaning of s319 of the 1998 Act (requiring referral to an AMS).

Application to extend time refused.

Decision Number: [2018] NSWWCPCD 1
Decision date: 10 January 2018
Matter No: A3-2202/17
Decision Maker: Snell AP, Workers Compensation Commission