

WORKERS COMPENSATION COMMISSION

CERTIFICATE OF DETERMINATION

Issued in accordance with section 294 of the *Workplace Injury Management and Workers Compensation Act 1998*

Matter Number: 2565/19
Applicant: Lorena Iosefa
First Respondent: State of New South Wales (Western Sydney Local Health District)
Second Respondent: HealthShare NSW
Date of Determination: 29 August 2019
Citation: [2019] NSWCC 285

The Commission determines:

Findings

1. Mrs Iosefa sustained a work-related impingement syndrome to her right shoulder.
2. I am not satisfied that Mrs Iosefa suffered a work-related back injury, or injury to the left shoulder.
3. The contraction of the said impingement syndrome was the contraction of a disease pursuant to s 4b(i) of the *Workers Compensation Act 1987*, to which employment was the main contributing factor.
4. Pursuant to s 15 of the *Workers Compensation Act 1987*, the second respondent is liable, and there will be an award in favour of the first respondent.
5. The injury to the right shoulder has caused incapacity, and Mrs Iosefa is capable of carrying out suitable duties.
6. The pre-injury average weekly earnings were \$863.09.
7. Mrs Iosefa can earn \$311 per week carrying out suitable duties.

Orders

1. There is an award in favour of both respondents in respect of the claim for injury to the back.
2. There is an award in favour of both respondents in respect of the claim for injury to the left shoulder.
3. Claim for injury to the applicant's knees is discontinued.
4. There is an award in favour of the first respondent in relation to the claim for injury to the right shoulder.
5. The second respondent will pay the following weekly amounts:
 - (a) \$508.93 from 10 July 2015 to 17 October 2015
 - (b) \$379.47 from 18 October 2015 to 10 April 2018

6. The second respondent will pay outstanding section 60 expenses on production of accounts, receipts and/or H IC documentation.

A brief statement is attached setting out the Commission's reasons for the determination.

John Wynyard
Arbitrator

I CERTIFY THAT THIS PAGE AND THE FOLLOWING PAGES IS A TRUE AND ACCURATE RECORD OF THE CERTIFICATE OF DETERMINATION AND REASONS FOR DECISION OF JOHN WYNYARD, ARBITRATOR, WORKERS COMPENSATION COMMISSION.

A Jackson

Ann Jackson
Acting Senior Dispute Services Officer
As delegate of the Registrar



STATEMENT OF REASONS

BACKGROUND

1. Lorena Iosefa (the applicant) brings an action seeking payments of weekly compensation and s 60 expenses against the two respondents for injuries she alleges occurred whilst working in an industrial laundry. Employers Mutual Limited, the first respondent, insured the respondent between 1 January 2006 and 10 November 2010. QBE Insurance (Australia) Ltd as agent for NSW Self Insurance Corporation, the second respondent, was on risk from 11 November 2010 and for all material times thereafter. As originally framed, the claim sought compensation for injuries to the applicant's knees, shoulders and back regarding dates of injury which will be more fully considered below.
2. Liability was denied by the first respondent by a s 78 notice dated 7 May 2019, and the second respondent in a s 74 notice issued on 8 February 2013.
3. An Application for Compensation against Multiple Respondents (ARD) issued on 28 May 2019.
4. The first respondent issued its Reply on 19 June 2019. The second respondent on 19 February 2019.

ISSUES FOR DETERMINATION

5. The parties agree that the following issues remain in dispute:
 - (a) Did Mrs Iosefa injure her shoulders, or either of them?
 - (b) If so, who bears liability for payments of compensation?
 - (c) If so, is Mrs Iosefa able to perform suitable duties?
 - (d) If so, what is the value of her residual capacity to earn?

PROCEDURE BEFORE THE COMMISSION

6. This matter was listed for hearing at Penrith on 15 July 2019. Mr Bill Carney of counsel appeared for the applicant, Mr Paul Stockley of counsel for the first respondent and Ms Lyn Goodman of counsel for the second respondent. I am satisfied that the parties to the dispute understand the nature of the application and the legal implications of any assertion made in the information supplied. I have used my best endeavours in attempting to bring the parties to the dispute to a settlement acceptable to all of them. I am satisfied that the parties have had sufficient opportunity to explore settlement and that they have been unable to reach an agreed resolution of the dispute.

EVIDENCE

Documentary Evidence

7. The following documents were in evidence before the Commission and taken into account in making this determination:
 - (a) ARD and attached documents;
 - (b) Reply and attached documents for the first respondent;
 - (c) Reply and attached documents for the second respondent.

Oral Evidence

8. No application was made in regard to oral evidence.

FINDINGS AND REASONS

9. At the outset of the hearing Mr Carney discontinued the action for compensation regarding injury to Ms Iosefa's knees and consequently Part 4 of the ARD was amended to delete subparagraph (i) of the description of the injury.
10. The industrial laundry at which Mrs Iosefa was working serviced local hospitals. Mrs Iosefa is Samoan and came to Australia in 1985 from New Zealand, where she had been living with her family. She began work on 22 January 2006. She relied on a statement dated 2 April 2019.
11. At [6] Mrs Iosefa described her work duties as follows:¹

"This work involved moving large numbers of items to be washed from conveyor belts to industrial washers. I would do this for 3 hours. I would then work at the wringing and drying machines for 5 hours. I would be constantly moving first dry items and then wet items all day. The wet items involved them being moved to a drying machine and this involved lifting them at or above shoulder height. They were heavy as they were wet and I estimate I would be doing these duties for at 3 hours per day, 5 days a week. I would also have to separate the wet blankets before I put them in the dryer and this was difficult and had to be done at speed as there were many items to be dried. All these activities involved me stretching my arms, twisting my neck and back and putting pressure on my shoulders, neck and back. As I am right handed I used my right arm and shoulder to lead when I was doing the lifting and separating."

12. She said that she noticed the onset of problems in her right shoulder:

"I did these duties from when I started at the linen service up to 2011 when I noticed pain in my shoulders getting more painful. I did have trouble with my shoulders from my first accident in 08/03/2006 when I tripped over the pallet but it increased with time and work and became a problem in 2011."

13. She consulted the Mt Druitt Medical Centre, where she was attended by a number of GPs, who issued various certificates.
14. Although Mrs Iosefa nominated 2011 as being the date of injury, contemporaneous documentation showed that in fact she had first injured her right shoulder on 19 July 2010. The notice of injury form was dated the same day. Ms Iosefa reported in per own handwriting:²

"I was pulling the blanket from the folder I felt a sharp pain from both legs and right shoulder going down to my upper back."

15. An "initial" WorkCover medical certificate issued on 20 July 2010 in which Mrs Iosefa's GP Dr Rana certified that she was fit for suitable duties. The injury was identified as "muscle strain back." The date of injury was identified as 19 July 2010.³

¹ ARD 1

² ARD 122

³ Reply first respondent 12

16. Medical certificates were issued identifying the date of injury and the injuries themselves inconsistently, sometimes mentioning only the back and other times also mentioning the right shoulder. These certificates certified that Mrs Iosefa was fit for suitable duties only.
17. On 13 August 2010 a final WorkCover certificate was issued by Dr Patu, certifying that Mrs Iosefa was fully fit from 15 August 2010⁴.
18. On 20 August 2010 Dr Patu responded to a fax questionnaire from the insurer. In it he certified that Mrs Iosefa was back on full duties, but that she was having treatment by way of home-based exercise and intermittent physiotherapy⁵.
19. The injury remembered by Mrs Iosefa occurred almost a year later on 11 July 2011.
20. The initial WorkCover certificate was issued on 12 July 2011. It diagnosed:

"Soft tissue injury - right shoulder - lower back pain is radiating to the groin" the cause of the injury was described as "continuous separating the blankets and thrawing [sic] the washing machine."
21. The date of injury was 11 July 2011.⁶ A later WorkCover certificate (4 September 2011) described the cause as "separating tangled blankets and throwing them into washing machine", which I take to be the meaning of the description in this initial certificate.
22. WorkCover certificates were issued periodically until on 22 August 2014 Ms Iosefa was again certified as being fit for full duties by Dr Patu.⁷
23. Mrs Iosefa worked thereafter performing full duties until she ceased work, on one view, on 9 July 2015. A Centrelink separation certificate dated 1 February 2019 recorded that Mrs Iosefa worked for the respondent from 22 January 2006 to 9 July 2015.⁸ The typewritten form indicated that Mrs Iosefa had ceased work voluntarily, and had "resigned."
24. Mrs Iosefa did not refer to the certification that had her fit for full duties from 22 August 2014. As to her shoulder injury she said:⁹

"I saw Dr Daniel Briggs for treatment for my shoulder in 2011 and with painkiller was able to work till 2013. From that time I have been unable to continue my work. When I stopped working I had been taking time off for pain for a couple of years and one day my supervisor "Ali" told me to go home and they would call me when I was needed. I think by this stage even my work knew I could not work and while I wanted to work I was obviously taking to much time off work."
25. In a non-WorkCover certificate dated 29 January 2012, Dr Patu recommended that Mrs Iosefa see Dr Biggs and also to have an MRI scan.¹⁰
26. No report was lodged by Dr Biggs.

⁴ Reply first respondent 17

⁵ Reply first respondent 20

⁶ ARD 29

⁷ ARD 101

⁸ ARD 109

⁹ ARD 1-2

¹⁰ ARD 26

27. Mrs Iosefa retained for medico-legal purposes Dr John Beer, Orthopaedic Surgeon. In his report of 8 September 2018¹¹ Dr Beer concentrated initially on the history and treatment of the knee problem, which is not of present concern. The history taken regarding the symptoms in the right shoulder began with the incident of 11 July 2011. Dr Beer was unaware of the earlier injury 19 July 2010. However he did note the history that Mrs Iosefa had suffered symptoms in her shoulder since her original fall in "2003", by which I assume he meant the injury of 8 March 2006.
28. Dr Beer did not take any history of Mrs Iosefa's certification by her GPs during the currency of her problem, and particularly that she had been certified fit for full duties a year or so before she ceased work.
29. Dr Beer found a degree of impingement, an irritable right shoulder joint and some degree of tendonitis in the rotator cuff on examination. Dr Beer diagnosed a soft tissue injury to the rotator cuff. He noted that no MRI scan was available and relied on his clinical experience to diagnose a rotator cuff partial tear from the evidence of impingement that he found on examination. He also found there was a degree of general restriction of movement consistent with capsulitis (frozen shoulder syndrome) which was complicating the injury.
30. As to Mrs Iosefa's capacity to earn, Dr Beer said:
- "I feel the worker's knee joint as such is that would not be able to carry out standing positions at work. If any part-time work could be available for her but I think due to the disability with her shoulder and knee, she is not able to carry out such duties except part time duties of a light nature. At the moment due to her age and limited education, she may be only able to carry out certain types of below shoulder activities working at a bench on a part-time basis part time on 2-3 days a week and then her progress be assessed re further any treatment to be required after 12 months."
31. Mrs Iosefa, in relation to her current capacity said: ¹²
- "At the present time I have difficulty using my right shoulder for many everyday activities that involve me lifting it over my shoulder height for instance combing my hair. I also have trouble lifting cooking pots full of food and don't cook for my family anymore."
32. Mrs Iosefa was asked about her work history by Dr Beer.¹³ She had not worked until she came to Australia in 1985. She worked for three months doing "bench type/electrical lead type duties" and for two months packing for a seed company. After that she looked after her children until she commenced employment with the respondent company.
33. The second respondent relied on the opinion of Dr Robert Breit, Orthopaedic Surgeon, who reported on February 2019. No medico-legal referee was retained by the first respondent. Dr Breit took a history that Mrs Iosefa injured her right shoulder at the time of the 2006 fall, but for which she received no treatment. Dr Breit noted in regard to the knee symptoms following the fall:¹⁴
- "Initially, I was told that she was still on her probationary period so that she did not see her GP until 2-3 weeks later. Subsequently, I was told that she did see the GP who gave her a certificate which she did not present because she was worried about losing her job. It is also claimed that the first line of treatment was to prescribe Lyrica and Endone".

¹¹ ARD 3

¹² ARD 2

¹³ ARD 7

¹⁴ Reply second respondent 7

34. He recorded her complaint that the right shoulder symptoms persisted particularly when separating linen from the laundry bags and placing them on to a conveyor belt for washing. She alleged that her shoulder condition was aggravated by throwing blankets, and that she reported her concerns to her supervisor.
35. Dr Breit asked Mrs Iosefa about the injury of 19 July 2010, and was told that she had no recollection. With regard to the injury of 11 July 2011 Mrs Iosefa did not claim any traumatic injury but said that her knee and shoulder pain was due to her standing up all day as well as separating linen and other duties. She said she put in the claim at that time because she knew that she could not keep up with the work and that "the kids had to be fed." I note in passing that Mrs Iosefa and her husband have had the care of 10 children, seven of their own and three adopted.
36. Although Dr Breit had access to an ultrasound of the right shoulder dated 9 September 2011, he did not refer to it in his diagnosis, which was of a right rotator cuff impingement, based, I assume, on his clinical examination. Dr Breit considered that the right rotator cuff impingement probably dated from the 2006 injury.
37. As to capacity to work, Dr Breit said:¹⁵

"She is incapacitated, but could work 4 hours a day/5 days a week where there is no prolonged walking, squatting or kneeling and where there is no work above chest height or in a forceful repetitive manner."

SUBMISSIONS

38. Mr Carney relied upon the opinion of Dr Beer. Mr Carney said that although a certificate had issued in 2014 stating that Mrs Iosefa was fit for full duties, nonetheless the evidence was that she ceased work in July 2015 because she was unable to continue to do it. Whilst there were some restrictions caused by the knee injury, which was not the subject of the application, nonetheless I would be satisfied that the shoulder and back injuries were sufficient of themselves to create the incapacity claimed.
39. Mr Carney submitted that I would accept the evidence of Mrs Iosefa, Dr Beer and Dr Breit that she continued to be incapacitated. He conceded that although the injury to the left shoulder was pleaded, there was no evidence to support that claim.
40. Similarly, he conceded that the evidence regarding incapacity caused by Ms Iosefa's back condition is also lacking in support.
41. Mr Stockley submitted that there was no liability to be found in the first respondent, EML. He said that his insurer had acted "responsibly", whilst denying any injury to the right shoulder on the pleaded date of 6 March 2006, in accepting that there was evidence of a right shoulder injury on 19 July 2010, and for which Mrs Iosefa was certified as being fit for suitable duties. This, however, would not result in any liability to EML, as Mrs Iosefa was certified to return to full duties on 13 August 2010, prior to the admitted injury of 11 July 2011.
42. During submissions Mr Stockley suggested that perhaps although Mrs Iosefa said that she ceased work in 2013, she was not in fact officially terminated until 2014. I invited Mr Carney to obtain some instructions as to what and he reported back that she indeed had ceased work on the later occasion.
43. Mr Stockley submitted that there is no evidence that would substantiate any incapacity arising from the applicant's back injury.

¹⁵ Reply second respondent 11

44. For the second respondent, Ms Goodman referred me to the certification regarding the injury to the right shoulder arising from the 19 July 2010 incident when the first respondent was on risk. She said that in any event, like the first respondent, she would not be liable for any incapacity because although Mrs Iosefa was certified as being fit for suitable duties between 11 July 2011 and 22 August 2014, she was nonetheless certified as being fit for pre-injury duties thereafter, and did not cease work until some later indeterminate time.
45. She submitted that the evidence of Mrs Iosefa was confused and contradictory and that I would not be satisfied that she had established a case on the balance of probabilities. Mrs Iosefa had clearly forgotten that she had time off for her right shoulder injury in July and August 2010, and there was no support for her contention that she had suffered from right shoulder pain since her original fall of 8 March 2006.
46. Moreover, she had failed to refer to the certification which established that she recovered from both periods of incapacity in July – August 2010 and between July 2011 and August 2014. Her assertion that she ceased work in 2013 was clearly incorrect, and Ms Goodman submitted that the best evidence was that she ceased work on 9 July 2015, which was the date that appeared on the Centrelink Separation Certificate.
47. Ms Goodman submitted that I would not accept the suggestion from Mr Carney made during submissions that although Mrs Iosefa was referred to Dr Briggs, she did not in fact see him. This was contradicted by Mrs Iosefa herself in her statement.
48. In the event that any liability was found against her client, Ms Goodman submitted that Mrs Iosefa was capable of doing the desk work that she acknowledged doing when she first came to Australia, and that pursuant to s 32A I would find that she was fit for suitable duties.
49. Ms Goodman also referred to *Wollongong Nursing Home Pty Ltd v Dewar*,¹⁶ in submitting that there was employment that could be found that was available work, rather than an artificial “make-work” type job.

DISCUSSION

50. This is one of those cases where a good deal more precision in the evidence was desirable. No attempt was made to identify, let alone resolve, the inconsistencies.
51. No explanation was given as to the absence of any report from Dr Briggs. I reject Mr Carney’s explanation from the bar table that no report from Dr Briggs had been lodged because Mrs Iosefa did not keep the appointment made by Dr Patu. Mrs Iosefa said herself that she saw Dr Briggs for treatment in 2011.
52. It was submitted that I could draw a *Jones v Dunkel* inference that the evidence of Dr Briggs had not been tendered because it would not have assisted her case. However, in the light of the unanimous medical evidence before me I do not find such an absence to be fatal to Mrs Iosefa’s case. (It is equally possible that the failure to lodge a report from Dr Briggs is consistent with the lack of precision in the evidence to which I have referred).
53. As has often been held in this jurisdiction, a common-sense evaluation of the causal chain is required where causation is in issue. Whether Mrs Iosefa’s incapacity, or any of it, results from her employment duties is a question of fact to be determined on the basis of the evidence including, where applicable, expert opinion¹⁷.

¹⁶ [2014] NSWCCPD 55 (*Dewar*).

¹⁷ *Kooragang Cement Pty Ltd v Bates* (1994) 35 NSWLR 452; (1994) 10 NSWCCR 796 (*Kooragang*).

54. As conceded by Mr Carney, I am not satisfied that Mrs Iosefa has sustained any compensable injury to her back. Although mention was made in some of the certificates to the back, the evidence from Mrs Iosefa about those complaints was brief, to say the least. Her statement was concerned with mainly her right shoulder problem, with the occasional reference to her knee problem. She did not describe her back symptoms, or their onset, or their intensity.
55. Although Dr Beer found there was some degenerative pathology in the thoracic spine, when he gave his prognosis, it was restricted to the future of the right knee and the right shoulder. Dr Breit thought that Mrs Iosefa would have multilevel spondylosis, but he did not relate that to her employment.
56. I am satisfied that Mrs Iosefa is incapacitated by her right shoulder condition, and I am satisfied that the shoulder condition has resulted from the nature of the work she was required to do as a laundress in the respondent company's industrial laundry.
57. The confusion within Mrs Iosefa's statement is to some extent clarified by the WorkCover certificates that have been issued in the case. They demonstrate that over two periods of time the condition of her shoulder became so troublesome that her GP certified her as being fit for suitable duties. Mrs Iosefa's evidence was that she had been having trouble with her right shoulder since her fall on 8 March 2006. I accept that she told Dr Breit that she had no treatment for that condition until the event of 11 July 2011. I also accept that she could not remember the 2010 incapacity. The tenor of her history to Dr Breit was that she was concerned to maintain her job because of her domestic responsibilities and that the pain in the shoulder had been a constant, but worsening, source of irritation.
58. Similarly, Dr Beer recorded a history that Mrs Iosefa had been suffering symptoms in her right shoulder since the original fall.
59. There is accordingly some corroboration for the general complaint regarding the right shoulder. Both Dr Breit and Dr Beer diagnosed a rotator cuff injury, both diagnoses being based upon evidence of impingement in the right shoulder joint. Although not noted by either specialist, the ultrasound taken on 9 September 2011 also confirmed a shoulder impingement syndrome, and bursitis.
60. I accept the thrust of the submissions from the two respondents that caution has to be exercised when accepting Mrs Iosefa in the face of independent contemporaneous documentary evidence that demonstrated that, whilst she had periods of incapacity as a result of her right shoulder symptoms, she had also been certified fit for her pre-injury duties by her own GP.
61. I also accept that caution has to be exercised in view of the inconsistencies in the evidence. Mrs Iosefa said that "Ali" told her not to come back because she was taking so much time off with her shoulder problem. She said that occurred in 2013, and yet she was certified as being fit for light duties until 22 August 2014, when she was certified fit for pre-injury duties. I assume she remained at work until at least that date. Her evidence that "Ali" had terminated her employment has not been the subject of any challenge, and accordingly it may be, notwithstanding the certification for pre-injury duties on 22 August 2014, that Mrs Iosefa continued to have time off. Her attendance records were not before me.
62. The Centrelink separation certificate was dated 1 February 2019, and I am accordingly uncertain whether date of termination, 9 July 2015, was obtained from. On its face the "voluntary" resignation is not consistent with Mrs Iosefa's unchallenged version of how she came to cease work. A further inconsistency in the case was Mr Carney's instructions, obtained during the hearing, that Mrs Iosefa ceased work in 2014.

63. However, the description of the nature of the work Mrs Iosefa had to carry out is consistent with the onset of her impingement syndrome, as she was dealing with heavy and wet laundry on an industrial scale. She had to move large numbers of laundry items from conveyor belts to industrial washers and work at the wringing and drying machines during her working day. I accept that her work, which included moving wet items and separating them from each other, entailed significant use of Mrs Iosefa's dominant right arm and shoulder.
64. Mrs Iosefa's inability to recall the 2010 period of incapacity tends to underline her history that her right shoulder symptoms had been continually troublesome since 2006, but that she continued to work as her condition worsened because of her need to help support her large family.
65. I am satisfied that the nature of the work Mrs Iosefa was performing was arduous and was the cause of her right shoulder symptoms. I accept her evidence given to Dr Breit that she refrained from complaining about her symptoms, until she finally had to put in a claim, as she was concerned to keep her job. No doubt that concern was based on the fact she had a large family to help support.
66. The certification of course is not conclusive evidence, and care has to be taken in making determinations of fact based solely on such records.¹⁸ Mrs Iosefa's statements have to be considered in the light of the inferences that the certification history raise. The contemporaneous evidence in the form of the WorkCover medical certificates to which I have referred satisfy me that the symptoms in the right shoulder became incapacitating on 19 July 2010. I accept Mrs Iosefa's explanation given to Dr Breit that she could not recall that incident. Whilst some more attention to detail within her statement would have been helpful, the fact that she did not remember the 2010 incident does not contradict the thrust of her evidence and confirms that the condition in her shoulder worsened as she continued to do her duties.
67. Moreover, I do not accept the certification as being conclusive in these circumstances. It is apparent that Mrs Iosefa was doing her best to keep working, and the expert evidence on both sides of the record is that Mrs Iosefa has not recovered from her right shoulder impingement syndrome. The certification shows that for a short time between 20 July 2010 and 13 August 2010 the state of Mrs Iosefa's right shoulder was such that she had to go on light duties. The fact that she was certified fit for pre-injury duties on 13 August 2010 does not indicate that she had recovered. The questionnaire completed by Dr Patu of 20 August 2010 indicated that whilst she was doing her pre-injury duties, Mrs Iosefa nonetheless needed further treatment by way of home-based exercise and intermittent physiotherapy.
68. The second period of incapacity speaks for itself. This was not an occasion when Mrs Iosefa was certified as being unfit for a matter of weeks - she was on light duties certification for a period of over three years, from 11 July 2011 to 22 August 2014. It is unlikely, bearing in mind the nature of the duties she was doing, that Mrs Iosefa had recovered from her right shoulder condition at that latter date. Her employment was terminated because she had been taking time off work "for a couple of years", according to her statement, and whatever the basis of the certification regarding pre-injury duties, I do not accept either that the right shoulder condition had recovered, or that Mrs Iosefa was no longer incapacitated.
69. As to apportionment of liability between the first and second respondent, it can be seen from my findings that I am satisfied that the nature of the work performed by Mrs Iosefa was the cause of the gradual onset of her impingement syndrome. Accordingly, I am satisfied that the injury was a disease that was contracted by Mrs Iosefa in the course of her employment pursuant to s 4b(i) of the 1987 Act. I am satisfied that her employment was the main contributing factor – indeed no submissions were made regarding the nature of the injury, the

¹⁸ *Qannadian v Bartter Enterprises Pty Limited* [2016] NSWCCPD 50

pleadings for which relied, amongst other pleas, on s 4(b). I have found that the injury was the contraction, rather than the aggravation pursuant to s 4 (b)(ii) of the 1987 Act.

70. Accordingly, pursuant to s 15(1)(a)(i) and (b) of the 1987 Act the second respondent is liable, being the insurer for the employer who last employed the worker in employment to the nature of which the disease was due.

71. Section 32A of the 1987 Act provides relevantly:

"current work capacity" , in relation to a worker, means a present inability arising from an injury such that the worker is not able to return to his or her pre-injury employment but is able to return to work in suitable employment.

"suitable employment" , in relation to a worker, means employment in work for which the worker is currently suited:

(a) having regard to:

(i) the nature of the worker's incapacity and the details provided in medical information including, but not limited to, any certificate of capacity supplied by the worker (under section 44B), and

(ii) the worker's age, education, skills and work experience, and

(iii) any plan or document prepared as part of the return to work planning process, including an injury management plan under Chapter 3 of the 1998 Act, and

(iv) any occupational rehabilitation services that are being, or have been, provided to or for the worker, and

(v) such other matters as the Workers Compensation Guidelines may specify, and

(b) regardless of:

(i) whether the work or the employment is available, and

(ii) whether the work or the employment is of a type or nature that is generally available in the employment market, and

(iii) the nature of the worker's pre-injury employment, and

(iv) the worker's place of residence."

72. Mrs Iosefa is aged 56 years, and, as indicated, has been living in Sydney since 1995. Her statement was devoid of any other material regarding her age, education, skills and work experience. Dr Peer took a history that she had in fact come to Australia in 1985 and done some manual labour in two previous jobs, each lasting only a few months, as it would appear most of Mrs Iosefa's time was otherwise taken up in raising her children. Dr Beer noted that Mrs Iosefa has a limited education and could only work at a bench to 3 days a week doing certain types of below shoulder activities. I assume the reference to the bench is on account of Mrs Iosefa's problems with her knee and accordingly is not relevant to this assessment. Dr Breit thought Mrs Iosefa could work five days a week for four hours per day where there was relevantly no work above chest height required or work in a forceful repetitive manner.

73. Accordingly the bench type/electrical lead type work she did, as described by Dr Beer, would be suitable duties that Mrs Iosefa could perform. That description accords with work on a process line which I am satisfied would be suitable employment within the above definition. However I take into account Mrs Iosefa's own description of the limitations that she has trouble lifting cooking pots and industry anything that requires her to lift her right arm over shoulder height. I think therefore that the hours she could work would be limited to 15 hours per week over three or four days.

74. I think she could earn \$20 per hour doing that work.

75. The pre-injury average weekly earnings are agreed to be \$863.09.

Findings

76. Mrs Iosefa sustained a work-related impingement syndrome to her right shoulder.
77. I am not satisfied that Mrs Iosefa suffered a work-related back injury, or injury to the left shoulder.
78. The contraction of the said impingement syndrome was the contraction of a disease pursuant to s 4b(i) of the 1987 Act, to which employment was the main contributing factor.
79. Pursuant to s 15 of the 1987 Act, the second respondent is liable, and there will be an award in favour of the first respondent.
80. The injury to the right shoulder has caused incapacity, and Mrs Iosefa is capable of carrying out suitable duties.
81. The pre-injury average weekly earnings were \$863.09.
82. Mrs Iosefa can earn \$311 per week carrying out suitable duties.

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83. There is an award in favour of both respondents in respect of the claim for injury to the back.
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