

# WORKERS COMPENSATION COMMISSION

## CERTIFICATE OF DETERMINATION

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

**Matter Number:** 6637/19  
**Applicant:** Stephen James Woods  
**Respondent:** Shade Australia Pty Limited  
**Date of Determination:** 10 March 2020  
**Citation:** [2020] NSWCC 70

The Commission determines:

1. The applicant sustained a consequential condition at his right hip as a result of the injury to his left hip deemed to have occurred on 19 March 2018.

The Commission orders:

2. The matter is remitted to the Registrar to be referred to an Approved Medical Specialist (AMS) for assessment as follows:

Date of injury: 19 March 2018 (deemed)

Body parts: Left lower extremity (hip)  
Skin (scarring - left hip)  
Right lower extremity (hip)

Method: Whole person impairment

3. The materials to be referred to the AMS are to include the Application to Resolve a Dispute and all attachments, the Reply and all attachments and the document attached to the Application to Admit Late Documents filed by the applicant on 17 December 2019.

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

Rachel Homan  
**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 RACHEL HOMAN, ARBITRATOR, WORKERS COMPENSATION COMMISSION.

*A Sufian*

Abu Sufian  
Senior Dispute Services Officer  
**As delegate of the Registrar**



## STATEMENT OF REASONS

### BACKGROUND

1. Mr Stephen James Woods (the applicant) was employed as a warehouse manager by Shade Australia Pty Limited (the respondent) between 1 December 2014 and 19 March 2018. The applicant claimed that he sustained an injury to his left hip as a consequence of the nature and conditions of his employment with the respondent, which involved lifting heavy rolls of shade cloth weighing almost 60 kg, bending, squatting, pushing, pulling their last now I got the day that's right yeah nine act leave there you questions about previous related to and climbing up racking.
2. Liability for an injury to the applicant's left hip was accepted by the respondent and compensation paid, including the costs of a left total hip replacement surgery performed by Dr Chandra Dave on 8 December 2018. The applicant claims that as a result of the injury to his left hip he has sustained a consequential condition at his right hip. Liability for the consequential right hip condition was disputed by the respondent in a dispute notice issued pursuant to s 78 of the *Workplace Injury Management and Workers Compensation Act 1998* (the 1998 Act), dated 16 January 2020.
3. The present proceedings were commenced by an Application to Resolve a Dispute (ARD) seeking lump sum compensation pursuant to s 66 of the *Workers Compensation Act 1987* (the 1987 Act) in respect of permanent impairment to the applicant's left lower extremity (hip), scarring and right lower extremity (hip).

### PROCEDURE BEFORE THE COMMISSION

4. At a teleconference on 6 February 2020, amendments were made to the ARD clarifying the injury description. Leave pursuant to s 289A(4) of the 1998 Act was granted to the respondent to rely on the dispute set out in the s 78 notice, noting that it was served after the commencement of proceedings in the Commission.
5. The parties appeared for conciliation conference and arbitration hearing on 9 March 2020. The applicant was represented by Mr Rohan de Meyrick of counsel, instructed by Ms Anna Gordon. The respondent was represented by Mr Howard Halligan of counsel.
6. 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.

### ISSUES FOR DETERMINATION

7. The parties agree that the following issues remain in dispute:
  - (a) whether the applicant has sustained a consequential condition at his right hip as a result of the injury to his left hip deemed to have occurred on 19 March 2018; and
  - (b) the degree of permanent impairment resulting from the injury.

## **EVIDENCE**

### **Documentary evidence**

8. 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, and
  - (c) Document attached to an Application to Admit Late Documents filed by the applicant on 17 December 2019.
9. Neither party applied to adduce oral evidence or cross-examine any witness.

### **Applicant's evidence**

10. The applicant's evidence is set out in a written statement made by him on 11 December 2019.
11. The applicant described the nature of his employment with the respondent as very physical and involving a significant amount of manual heavy lifting.
12. The applicant first noticed symptoms in his left hip in October to November 2017. The applicant subsequently developed an antalgic gait as a way of avoiding pain. The applicant left things for a while then consulted a doctor in January 2018. The applicant was referred by that doctor for an x-ray of his pelvis and left hip and referred to an orthopaedic surgeon, Dr Fred Nouh. It looked as though a total left hip replacement surgery was likely.
13. The applicant was initially reluctant to make a worker's compensation claim as he thought it would be a hassle. Later the applicant realised he did not have enough superannuation to cover the costs of the surgery. The applicant was advised by his boss to make a claim.
14. In June 2018, the applicant was referred by his general practitioner, Dr Hosny Mechreky, to Dr Chandra Dave for a second opinion. Dr Dave confirmed that the applicant required a total hip replacement. The surgery was performed on 8 December 2018 by Dr Dave.
15. Post-surgically, the applicant had about six weeks of physiotherapy. The applicant was left with no strength in his left leg and his left buttock to left groin was very tight. The applicant had nerve pain in his left leg and foot and the femur bone ached after about half an hour of sitting in one position. The applicant said the pain in his left hip was chronic but varied in intensity between a 3 to 9/10.
16. The applicant said that he had difficulty ascending or descending stairs and found it impossible to walk without a walking stick. The applicant said,

"My right hip is getting affected as well because I'm bearing all the weight on my right hip. I have put on ten kilograms because I am unable to exercise."
17. The applicant described himself as very fit before his injury. The applicant had no prior left hip problems.

## Evidence from the applicant's treating practitioners

18. Attached to the ARD are the clinical records of Dr Hosny Mechreky. Those records make no reference to right hip symptoms and only minimal reference to the applicant's left hip injury.
19. Materials from the clinical file of orthopaedic surgeon, Dr Chandra Dave are also in evidence. Those materials confirm that the applicant underwent a left hip replacement surgery on 8 December 2018. A report from Dr Dave dated 31 January 2019 indicated that the applicant was "going well" and should improve with physiotherapy and strengthening.
20. On 2 July 2019, the applicant was referred for an x-ray of the pelvis by Dr Dave. The report of the x-ray indicated that the prosthesis in the applicant's left hip appeared satisfactory. With regard to the applicant's right hip, the report stated,

"There is narrowing of joint space of the right hip joint with sclerosis of subchondral bone in keeping with degenerative change. There are osteophytes seen at the margin of the femoral articular surface on the right side in keeping with degenerative change.

There is fullness of the femoral neck on the right side suggestive of a CAM type deformity? Femeroacetabular impingement."

## Dr Endrey-Walder

21. The applicant relies on a medicolegal report prepared by general and trauma surgeon, Dr P Endrey-Walder, dated 26 July 2019.
22. Dr Endrey-Walder took a history of the injury to the applicant's left hip that was consistent with the other evidence. Dr Endrey-Walder noted that the applicant had undergone an x-ray of the right hip on 2 July 2019 but at the time of his report the applicant had not had a review by Dr Dave.
23. The applicant reported continuous pain in his left hip while moving. The applicant said he would not leave home without a walking stick and at home tended to hang onto furniture. Two or three months earlier, the applicant started getting pain and clicking in the right hip, "it feels like it dropped out, I feel a shudder there like I did on the left".
24. Dr Endrey-Walder's examination revealed that the left leg measured just over 2 cm longer than the right. At the right hip, the applicant had 0 to 90° flexion/extension, quite good external rotation but no internal rotation.
25. Dr Endrey-Walder gave the opinion,

"Notwithstanding Dr. Dave's opinion on 31.1.2019 that things were 'going well', this man has remained with very significant ongoing symptoms, pain, a limp, restricted range of movement at the left hip, needs the use of a walking stick outside his house.

It would be perfectly reasonable to suggest that the onset of right hip pain is a consequential injury, in the sense that this man has had difficulty putting all his weight on the left leg while ambulating, thus overloading the right lower limb where he has some underlying arthritic condition at the hip, nothing as advanced as was the case on the left side."

26. Dr Endrey-Walder assessed the applicant as having 32% whole person impairment comprising 27% for the left hip, 1% for scarring and 6% for the right hip.

## **Dr Ridhalgh**

27. The respondent relies on medicolegal reports prepared by consultant orthopaedic surgeon, Dr Mark Ridhalgh, dated 6 December 2019 and 10 January 2020.
28. Dr Ridhalgh took a history of the applicant's left hip symptoms dating from November 2017. The applicant had worsening pain which deteriorated quite quickly. The applicant would limp at work and this was noticed by his employers.
29. Because of failure to improve and marked pain, the applicant came to a total hip replacement at Campbelltown Private Hospital in December 2018. The applicant remained in hospital for approximately two weeks and underwent six weeks of rehabilitation with outpatient therapy, stretching and strengthening exercises. Dr Ridhalgh said that the applicant's current symptoms included pain and discomfort in the hips worsened with activity and relieved by rest. The applicant was noted to use a stick to walk when he was out and about.
30. Dr Ridhalgh's examination of the applicant's right hip showed,

"Right hip had flexion 110°, extension 0°, abduction 20°, adduction 10°, internal rotation 20°, external rotation 30°."
31. Dr Ridhalgh reviewed an x-ray dated 18 December 2018 which showed osteoarthritis of the right hip. An x-ray of the pelvis and right hip on 2 July 2019 showed no material change.
32. Dr Ridhalgh said the applicant's x-rays confirmed osteoarthritis of the left hip which most likely developed over the course of the last few years or in approximately 2017. This may have been due to the conditions of the applicant's work, working on cement floors for most of his life. Dr Ridhalgh said,

"He is now developing osteoarthritis in the right hip and I believe it is likely that he had a pre-existing condition."
33. Dr Ridhalgh assessed the applicant as having 18% whole person impairment as a result of the injury to his left hip.
34. In his supplementary report, Dr Ridhalgh was asked specifically about the applicant's right hip. Dr Ridhalgh noted,

"The claimant has a BMI of 31 kg/m<sup>2</sup> which puts him in the obese range and would be a predisposing factor with his hips and it is my opinion it is likely that the osteoarthritis in his hips has been part of a pre-existing condition unrelated to his accident at work."
35. Dr Ridhalgh said there was no history of injury to the right hip and expressed the opinion,

"I believe that the claimant's right hip condition is a coincidental condition. He is highly likely to have had pre-existing osteoarthritis of the hip. The argument that left hip injury causing the right hip injury because of extra load being taken on the right hip is fallacious. The right hip developed osteoarthritis independently of the left hip condition."

## **Respondent's submissions**

36. Mr Halligan submitted that it did not follow that simply because the applicant had an accepted injury to his left hip, any difficulty at his right hip must be causally related.

37. Mr Halligan submitted that there was minimal evidence to support a finding of liability in relation to the applicant's right hip. Mr Halligan noted that the only evidence given by the applicant with respect to his right hip was the comment in his written statement that his right hip was getting affected because he was placing weight on it.
38. Mr Halligan observed that the applicant's general practitioner's notes were silent with regard to any right hip condition. Mr Halligan submitted that it was reasonable to expect some mention of right hip symptoms in the clinical notes if the applicant had been experiencing such.
39. Mr Halligan noted that there was no evidence from Dr Dave with regard to the applicant's right hip. Mr Halligan submitted that the absence of any opinion from Dr Dave was telling and that a *Jones v Dunkel*<sup>1</sup> inference was available.
40. Mr Halligan submitted that the applicant relied on one medicolegal consultation with Dr Endrey-Walder, who was not an orthopaedic surgeon. The bulk of Dr Endrey-Walder's report related to the applicant's left hip. Dr Endrey-Walder referred to the 2 July 2019 x-ray which was also considered by Dr Ridhalgh. Dr Ridhalgh reached the conclusion after viewing that investigation that the applicant's right hip condition was coincidental.
41. Mr Halligan submitted that there must be something more concrete in order to support a finding of a consequential right hip condition than what appeared in the evidence. A temporal connection between the left hip injury and right hip symptoms was not enough for the applicant to discharge the onus of establishing a right hip consequential condition on the balance of probabilities.
42. Mr Halligan noted that Dr Endrey-Walder's opinion was that it was "perfectly reasonable to suggest" that the right hip pain was a consequential condition. Mr Halligan said that a "reasonable suggestion" barely constituted a "possibility" and was insufficient to discharge the onus on the balance of probabilities.
43. Mr Halligan submitted that it was not necessary for the respondent to identify any alternative explanation for the symptoms at the applicant's right hip although the applicant's high BMI might provide such an explanation.

### **Applicant's submissions**

44. Mr de Meyrick noted that liability for the applicant's left hip injury had been accepted. The applicant had proceeded to a total hip replacement with an unsatisfactory result from that surgery.
45. Mr de Meyrick said the applicant's right hip symptoms were consequential to the injury in the applicant's left hip as a result of extra pressure being placed on the joint by an antalgic gait, and the unsatisfactory surgery. The applicant had given evidence in his written statement that the left hip remained very tight, he struggled with stairs and used a walking stick. The applicant said he placed all of his weight on his right hip and had gained 10 kg in weight due to not being able to exercise.
46. Mr de Meyrick noted that Dr Endrey-Walder had seen the x-ray of 2 July 2019 which showed pathology at the right hip. The history taken by Dr Endrey-Walder showed that the applicant had not been "going well" following his left hip surgery. Dr Endrey-Walder's examination revealed reduced flexion and no internal rotation and he expressed the opinion that there was a consequential condition at the applicant's right hip as result of the left hip injury.

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<sup>1</sup> [1959] HCA 8; (1959) 101 CLR 298 (3 March 1959).

47. Mr de Meyrick conceded that there was no mention of the right hip in the general practitioner's clinical notes but suggested it would be unsafe to draw any adverse inference from this because there was little recorded in the notes at all. The notes were unsatisfactory and did not indicate what was complained of at most surgery consultations. No mention was even made of the operation at the applicant's left hip despite consultations shortly before and after the procedure.
48. Mr de Meyrick referred me to the presidential decisions in *Arquero v Shannons Anti Corrosion Engineers Pty Ltd*<sup>2</sup> and *Seif v Secretary, Department of Family and Community Services*<sup>3</sup> and submitted that it was sufficient for the applicant to rely on medicolegal evidence to establish a consequential condition.
49. With regard to Dr Ridhalgh's reports, Mr de Meyrick said that there was no dispute that the applicant had pre-existing pathology at his right hip. Mr de Meyrick said it was not argued that the development of arthritis at the applicant's right hip was caused by the left hip injury. Rather, the applicant claimed that the left hip injury had rendered that pathology symptomatic. The degree of permanent impairment resulting from the applicant's condition was a matter for an AMS to assess. Mr de Meyrick said Dr Ridhalgh gave no explanation for why the argument that the left hip injury had caused the right hip injury because of extra load being taken on the right hip was fallacious. The presence of constitutional degenerative changes did not respond to the applicant's claim that a previously asymptomatic condition had been rendered symptomatic by the left hip injury. No competing cause for the applicant's right hip symptoms had been identified.
50. Mr de Meyrick submitted that the matter should be referred to an AMS for assessment. It was noted that the respondent did not dispute that the applicant had sustained scarring at his left hip as a result of the left hip surgery.

## FINDINGS AND REASONS

51. It is accepted by the respondent that the applicant sustained "injury" to his left hip pursuant to s 4 of the 1987 Act. Liability for scarring as a result of the left hip injury has not been disputed. What remains for determination by me is whether the applicant sustained a consequential condition affecting his right hip as claimed.
52. It is not necessary for the applicant to establish that any condition in his right hip is in itself an 'injury' pursuant to s 4 of the 1987 Act. Deputy President Roche in *Moon v Conmah*<sup>4</sup> observed at [45]-[46]:

"It is therefore not necessary for Mr Moon to establish that he suffered an 'injury' to his left shoulder within the meaning of that term in section 4 of the 1987 Act. All he has to establish is that the symptoms and restrictions in his left shoulder have resulted from his right shoulder injury. Therefore, to the extent that the Arbitrator and Dr Huntsdale approached the matter on the basis that Mr Moon had to establish that he sustained an 'injury' to his left shoulder in the course of his employment with Conmah they asked the wrong question."

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<sup>2</sup> [2019] NSWCCPD 3.

<sup>3</sup> [2020] NSWCCPD 6.

<sup>4</sup> [2009] NSWCCPD 134.

53. In *Bouchmouni v Bakhos Matta t/as Western Red Services*<sup>5</sup>, Roche DP noted,

“The Commission has considered and explained the difference between an ‘injury’ and a condition that has resulted from an injury in several recent decisions (*Moon v Conmah Pty Ltd* [2009] NSWCCPD 134 at [43], [45] and [50] (*Moon*); *Superior Formwork Pty Ltd v Livaja* [2009] NSWCCPD 158 at [122]; *Cadbury Schweppes Pty Ltd v Davis* [2011] NSWCCPD 4 at [28]–[32] and [39]–[42] (*Davis*); *North Coast Area Health Service v Felstead* [2011] NSWCCPD 51 at [84]; *Australian Traineeship System v Turner* [2012] NSWCCPD 4 at [28] and [29] (*Turner*); *Kumar v Royal Comfort Bedding Pty Ltd* [2012] NSWCCPD 8 at [35]–[49] and [61]).

...

The injury to Mr Bouchmouni’s right knee caused him to seek treatment in the form of surgery and physiotherapy. The evidence suggests that it was in the course of receiving that treatment, and/or as a result of an altered gait because of his knee symptoms, Mr Bouchmouni developed back symptoms. If that is accepted, and no reason has been advanced why it should not be, it is clear beyond doubt that his back condition has resulted from the treatment he received for his accepted knee injury and his altered gait. That does not, however, make the back condition an ‘injury’.”

54. A commonsense evaluation of the causal chain to determine whether any condition in the applicant’s right hip resulted from the accepted injury to his left hip is required. In *Kooragang Cement Pty Ltd v Bates*, Kirby P said,

“The result of the cases is that each case where causation is in issue in a workers compensation claim, must be determined on its own facts. Whether death or incapacity results from a relevant work injury is a question of fact. The importation of notions of proximate cause by the use of the phrase ‘results from’, is not now accepted. By the same token, the mere proof that certain events occurred which predisposed a worker to subsequent death or injury or death, will not, of itself, be sufficient to establish that such incapacity or death ‘results from’ a work injury. What is required is a commonsense evaluation of the causal chain. As the early cases demonstrate, the mere passage of time between a work incident and subsequent incapacity or death, is not determinative of the entitlement to compensation.”<sup>6</sup>

55. With regard to the standard of proof, Roche DP in *JB Metropolitan Distributors Pty Ltd v Kitanoski*<sup>7</sup>(*Kitanoski*), referring to the decision in *EMI (Aust) Ltd v Bes*<sup>8</sup> (*Bes*), said

“*Bes* only becomes relevant in a case where medical science says that there is a ‘possible’ connection between the incident and the relevant condition for which compensation is claimed. In that situation, if medical science does not say that there is ‘no possible connection’, a judge after examining the evidence may decide that it is ‘probable’. This statement is consistent with the decision of Spigelman CJ in *Seltsam Pty Ltd v McGuinness* [2000] NSWCA 29; 49 NSWLR 262 at [93], where his Honour explained that, in some cases, medical science cannot determine the existence of a causal relationship. As his Honour explained, such a state of affairs is not necessarily determinative of the existence or non-existence of a causal relationship for the purposes of attributing legal responsibility. The commonsense approach to causation at common law (which applies in workers’ compensation cases) is quite different from a scientist’s approach to causation.”

<sup>5</sup> *Bouchmouni v Bakhos Matta t/as Western Red Services* [2013] NSWCCPD 4; (2013) 14 DDCR 223; BC201319259.

<sup>6</sup> (1994) 10 NSWCCR 796 at [810].

<sup>7</sup> [2016] NSWCCPD 17; BC201601437 at [94].

<sup>8</sup> [1970] 2 NSW 238.



56. In *Arquero v Shannons Anti Corrosion Engineers Pty Ltd*<sup>9</sup>, to which the applicant referred in submissions, Wood DP observed with regard to the applicant's reliance on medicolegal evidence:
- “The Arbitrator approached the consideration of Dr Patrick's evidence by expressing the opinion that it was always difficult when the first reference to the condition was in a medicolegal report. It may be said that in some cases, that fact may pose a difficulty. However, it is not always the case. In this case, the factual basis upon which the consequential condition relies, that is the high tibial osteotomy, altered gait, limping and over-pronation, and a deteriorating condition in the right knee, is well made out in the historical reports.”
57. There is in this case, very little lay or medical evidence with regard to the applicant's right hip condition.
58. The applicant has provided lay evidence that he experienced a relatively quick onset of debilitating symptoms in his left hip in the context of his employment from late 2017 onwards. This led to the development of an antalgic gait. Consistently with the applicant's evidence, Dr Ridhalgh recorded in his history that the applicant was observed limping at work. The applicant proceeded to a left hip replacement which, notwithstanding the reports of Dr Dave, was evidently unsuccessful in alleviating all of the applicant's symptoms. Dr Ridhalgh and Dr Endrey-Walder both took a history of ongoing difficulties affecting the applicant's left hip and leg, including difficulties mobilising without the use of a walking stick, that was consistent with the applicant's lay evidence.
59. There is nothing in the clinical notes of the applicant's general practitioner to elucidate the timing of the onset of symptoms in the applicant's right hip or to suggest an explanation or cause of such symptoms. I accept, however, Mr de Meyrick's submission that little should be inferred from the absence of reference to the right hip in the clinical notes. It is apparent that it was not the applicant's general practitioner's practice to record details of the complaints made at surgery consultations. Most notes of his surgery consultations revealed little other than the actions taken with regard to referrals and prescriptions.
60. Mr Halligan submitted that I should draw an adverse inference from the failure to produce the evidence from Dr Dave with regard to the applicant's right hip. The report of the x-ray dated 2 July 2019 does indicate that the investigation was requested by Dr Dave. There is, however, no evidence before me that the applicant was reviewed by Dr Dave with the x-ray results. In the circumstances, I am not prepared to draw the inference suggested by Mr Halligan. The x-ray report confirms that there is degenerative pathology at the applicant's right hip.
61. It is noted that both Dr Endrey-Walder and Dr Ridhalgh reported findings on examination consistent with the symptoms and restrictions in the right hip reported by the applicant and the pathology shown on the x-ray. As a result, I am satisfied that the applicant has indeed been experiencing symptoms and restrictions in his right hip. What remains to be established is whether such symptoms and restrictions resulted from the left hip injury.
62. The applicant attributes the onset of symptoms in his right hip to placing all his weight on his right hip as result of pain in his left hip. The applicant also claimed that he had gained approximately 10 kg since the left hip injury as a result of being unable to exercise.

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<sup>9</sup> [2019] NSWCCPD 3.

63. The only opinion on causation favourable to the applicant is found in Dr Endrey-Walder's report. Although Dr Endrey-Walder's opinion is not expressed in the language of "probabilities", I do not accept that it is incapable of discharging the onus of proof. Having regard to the observations in *Kitanoski* and *Bes*, where medical science says that there is a 'possible' connection between the incident and the relevant condition for which compensation is claimed, it is open to me, after examining the evidence, to decide that it is 'probable'.
64. In this case, the opinion expressed by Dr Endrey-Walder receives support from the uncontradicted evidence indicating that the applicant was limping following the onset of left hip symptoms and had been mobilising using a walking stick in his right hand as a result of the left hip injury. The applicant's evidence that he had put on 10 kg in weight is also unchallenged and Dr Ridhalgh has commented on the possible association between his high BMI and the applicant's hip condition. I am satisfied on the evidence that notwithstanding the surgery performed by Dr Dave in December 2018, the applicant has continued to experience pain, stiffness and difficulty mobilising due to his left hip injury. I am satisfied that there is a temporal connection between the left hip injury in the onset of right hip symptoms. I draw no adverse inference from the omission of any reference to right hip symptoms in the clinical notes of the applicant's general practitioner, given the general absence of detail in those records. Whilst there is little in the medical evidence from the applicant's treating practitioners to support the applicant's claim, importantly, there is also nothing to suggest that the pathology shown in the applicant's right hip was previously symptomatic or could have been rendered symptomatic by any intervening event. I am satisfied that the facts and circumstances of this case provide a fair climate for the acceptance of Dr Endrey-Walder's opinion.
65. The only evidence contradicting Dr Endrey-Walder's opinion is the opinion given by Dr Ridhalgh that the condition in the applicant's right hip is coincidental and developed independently of the left hip condition. Dr Ridhalgh has expressed the view that the argument that the left hip injury caused right hip injury because of extra load being taken on the right hip is fallacious. As noted by Mr de Meyrick, however, Dr Ridhalgh has not explained why this is so. As a consequence, his opinion is less persuasive. I am also not satisfied that Dr Ridhalgh has properly appreciated that it is unnecessary for the applicant to establish that the osteoarthritis at his right hip was *caused* by the left hip injury. The applicant's case is simply that the osteoarthritis was *rendered symptomatic* as a result of the left hip injury. This is not a matter on which Dr Ridhalgh has expressed an opinion. As a result, Dr Ridhalgh's opinion does not render Dr Endrey-Walder's opinion on this matter any less persuasive.
66. Whilst the evidence is certainly sparse and the matter is not clear cut, in all the circumstances, I am satisfied that the applicant's right hip symptoms arose as a consequence of his left hip injury and I find accordingly.
67. In view of this finding, I consider it appropriate to remit the matter to the Registrar for referral to an AMS for assessment of the degree of permanent impairment to the applicant's left lower extremity (hip), skin and right lower extremity (hip) as a result of the injury deemed to have occurred on 19 March 2018.

## SUMMARY

68. The applicant's right hip condition is a consequential condition resulting from the left hip injury on 18 March 2018.
69. The matter is remitted to the Registrar for referral to an AMS for assessment of the degree of permanent impairment to the applicant's left lower extremity (hip), skin and right lower extremity (hip) resulting from the injury deemed to have occurred on 18 March 2018.

