

# WORKERS COMPENSATION COMMISSION

## CERTIFICATE OF DETERMINATION

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

**Matter Number:** 4544/19  
**Applicant:** Rizwan Rafique  
**Respondent:** Aldridge Traffic Systems Pty Ltd  
**Date of Determination:** 3 December 2019  
**Citation:** [2019] NSWCC 384

The Commission determines:

1. The applicant suffered an injury to his lumbar spine in the course of his employment with the respondent on 14 May 2014.
2. As a result of the injury referred to in (1) above, the applicant suffered a consequential condition to his cervical spine.
3. The matter is remitted to the Registrar for referral to an Approved Medical Specialist (AMS) for the determination of the permanent impairment arising from the following:

Date of injury: 14 May 2014  
Body systems referred: lumbar spine, cervical spine  
Method of assessment: whole person impairment.

4. The documents to be referred to the AMS to assist in their determination are to include the following:
  - (a) This Certificate of Determination and Statement of Reasons;
  - (b) The Amended Application to Resolve a Dispute together with the attachments to the originally filed Application to Resolve a Dispute;
  - (c) The Reply and attached documents, and
  - (d) The applicant's Application to Admit Late Documents dated 13 November 2019 and attachments.

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

Cameron Burge  
**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 CAMERON BURGE, ARBITRATOR, WORKERS COMPENSATION COMMISSION.

S Naiker

**Sarojini Naiker**  
**Senior Dispute Services Officer**  
As delegate of the Registrar



## **STATEMENT OF REASONS**

### **BACKGROUND**

1. Mr Rizwan Rafique (the applicant) brings proceedings for permanent impairment compensation against Aldridge Traffic Systems Pty Ltd (the respondent) arising from an admitted injurious event which took place in the course of his employment on 14 May 2014.
2. There is no dispute the applicant suffered a frank injury to his lumbar spine. The issue for determination concerns the status of the applicant's cervical spine. The applicant pleads both a frank injury to the cervical spine, or in the alternative a consequential condition caused by the accepted frank injury to the lumbar spine. At the hearing, the applicant put his case solely on the basis the cervical spine was a consequential condition. The respondent relevantly places consequential condition to the cervical spine in issue.
3. The claim is for permanent impairment compensation.

### **ISSUES FOR DETERMINATION**

4. The parties agree that the following matter remains in dispute:
  - (a) Did the applicant suffer a consequential condition to his cervical spine as a result of the incident on 14 May 2014?

### **PROCEDURE BEFORE THE COMMISSION**

5. The parties attended a conference/hearing on 21 November 2019. 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.
6. At the hearing of this matter, the applicant was represented by Ms N Compton of counsel and the respondent by Mr D Adhikary of counsel.

### **EVIDENCE**

#### **Documentary evidence**

7. The following documents were in evidence and taken into consideration by the Commission:
  - (a) Amended Application to Resolve a Dispute (Application) filed 15 November 2019;
  - (b) The attachments to the original Application;
  - (c) The Reply and attachments, and
  - (d) The applicant's Application to Admit Late Documents (AALD) dated 13 November 2019 and attachments.

## Oral evidence

8. There was no oral evidence called at the hearing.

## DISCUSSION

### Consequential condition to the cervical spine

9. Although the Application pleaded the neck condition in the alternative as a frank injury or consequential condition, Ms Compton noted at the outset of her submissions that the claim was limited to an alleged consequential condition. She accepted that having reviewed the evidence, there is no question the applicant's initial reports to both his employer and treating practitioners refer to his lumbar spine, and his complaints of neck symptoms came some time later.
10. Ms Compton noted the first reference to the cervical spine is on 18 June 2014, when the applicant had an x-ray taken. She submitted the applicant's complaints which gave rise to that x-ray being taken are consistent with his statement to the effect his neck problems started not long after his workplace injury.
11. Referring to the line of authority which includes cases such as *Moon v Conmah* [2009] NSWCCPD 134, Ms Compton submitted the applicant does not have to prove a sudden pathological change consistent with an "injury" pursuant to section 4 of the *Workers Compensation Act 1987* (the 1987 Act). Rather, to establish a consequential condition he need only demonstrate an increase in symptoms which, on a common sense basis, has been caused by the injury at issue. I accept that submission. What is required is for the injured worker to prove on the balance of probabilities that the symptoms and restrictions in the claimed body part (in this case the cervical spine) have resulted from the accepted lumbar spine injury (see also *Kumar v Royal Comfort Bedding* [2012] NSWCCPD 8 (*Kumar*)).
12. Mr Adhikary accepted the above proposition, however, he submitted there was no evidence sufficient to satisfy the applicant's onus of proving a consequential condition to the cervical spine. He noted that it was still necessary for the applicant to demonstrate a sufficient evidentiary chain of causation to ground a finding of consequential condition on a common-sense basis (see *Kooragang Cement Pty Ltd v Bates* (1994) 10 NSWCCR 796 (*Kooragang*) per Kirby P, as he then was). I accept Mr Adhikary's submission as to the need for a causal nexus, however, I am satisfied in this matter the causal nexus has been proven on the balance of probabilities.
13. The respondent placed great store in a visit by the applicant to his general practitioner a week before the injury at issue in which he complained of neck pain. I note, however, that is but one entry and refers to headaches caused by neck problems, and a stiff neck with reduced range of motion. That visit was against a background of the applicant suffering flu-like symptoms for some time, sufficiently serious that he required blood tests.
14. There is nothing to suggest the applicant had a long-standing neck condition, nor is there anything in the clinical notes which makes reference to neck pain persisting through the first few weeks after the applicant hurt his lower back. Were that the case, the continuity in pre-injury symptoms throughout the entire time amid multiple visits to the general practitioner may well be sufficient to rule out consequential condition. Certainly, the applicant's general practitioner did not see fit to refer him for any radiological investigation until mid-June 2014, when he complained of neck pain some one-month post-injury.

15. Moreover, the applicant states he has no recollection of visiting his general practitioner regarding his neck pain before the accident at issue. I accept that is the case, and whilst I do not doubt the accuracy of the clinical note in question, in my view the mere presence of neck pain does not of itself mean there is a causal link between that one episode and the neck pain which later arose in June 2014, a month after the injury at issue.
16. Mr Adhikary took the Commission at some length to the clinical note entries from the applicant's general practitioner and submitted they provided no basis to ground a finding that the applicant's neck issues are caused by the incident at issue. He made a similar submission in relation to the documents and reports of Ms Vlasov, exercise physiologist who has treated the applicant since the injury at issue.
17. Whilst the clinical notes do not provide opinions as to the cause of the applicant's neck pain, in my view that is hardly fatal to the applicant's case. It is common for clinical records of treating doctors to set out complaints of patients, proposed treatment and little more. They are not always documents which arise in contemplation of a claim or of litigation. Certainly, the absence of any statement regarding causation is not of itself sufficient to obviate any causal link between the injury at issue and a consequential cervical spine condition.
18. The respondent submitted that the Commission would not accept the opinion of Dr Mendelsohn, whose report dated 4 February 2019 makes no mention of any pre-existing neck pain and which says the cervical spine was a frank workplace injury to an otherwise asymptomatic body part. Mr Adhikary said the evidence clearly demonstrates that history is not accurate. I accept the submission that Dr Mendelsohn's conclusion is different from the case ultimately put by the applicant and that he did not know of the consultation for neck pain approximately one week before the injury at issue.
19. Nevertheless, I accept Ms Compton's submission that the description of the onset of symptoms as set out by Dr Mendelsohn is consistent with a consequential condition, noting he states they "developed a short time after the injury to his back." The fact Dr Mendelsohn mischaracterises the nature of the neck condition as a frank injury does not, in my view, render inaccurate the history taken by him as to the onset of the symptoms. It also, in my opinion, supports the applicant's case of a consequential condition developing in the neck as a result of altered posture caused by injury to the low back.
20. It was noted the applicant underwent an x-ray of his cervical spine on 18 June 2014. Mr Adhikary submitted that x-ray only shows degenerative changes and no pathology suggestive of a frank injury caused on 14 May 2014. As both counsels accepted, the applicant need not show a demonstrable pathological change for a consequential condition to be established (see the discussion in paragraph 11 above).
21. Mr Adhikary submitted the best the applicant's general practitioner, Dr Mohmad can say is that there "may be" a link between the incident on 14 May 2014 and the applicant's neck pain. He said there is no indication of how the applicant suffered a consequential condition. I reject that submission in light of the evidence of Ms Vlasov, treating exercise physiologist, which is discussed below.
22. The respondent submitted the report of Dr Panjraton, IME for the respondent dated 4 December 2014 made no mention of any complaint of neck injury, which is contrary to the applicant's statement in which he said he developed neck symptoms shortly after the injury at issue. When Dr Panjraton asked the applicant as to why he underwent a neck x-ray in June 2014, the applicant apparently said it was because his neck was "tight".

23. Whilst that submission may assist the respondent in terms of frank injury, I do not accept it with regards to a consequential condition, where an increase in symptoms may be sufficient to make a finding in an injured worker's favour provided a common-sense causal connection is established. In fairness to Mr Adhikary, this submission was made before Ms Compton conceded the applicant's case was put on the basis only of consequential condition.
24. As is the case with the applicant's general practitioner, Mr Adhikary submitted Ms Vlasov, exercise physiologist, only went so far as to say what could have happened in relation to the applicant's neck following the injury at issue, rather than providing a definitive opinion that his neck symptoms are linked to the incident at issue. Accordingly, Mr Adhikary said that opinion should not be accepted.
25. Ms Vlasov's report of 7 November 2019 stated:
- "From my knowledge he accrued his injury during pushing garbage at small compact space. Initially injury was in the lower back that are move to neck pain.
- Body posture was affected, by pressure / spasms of the lower back. This biomechanical body posture causing automatically neck protrusion.
- I believe that his injury was affecting whole spine including lower back, up a [sic] back and neck by activating the Intrinsic Back Muscles.
- The Intrinsic Back Muscles are the deep muscles of the back are well-developed and collectively extend from the sacrum to the base of the skull. They are associated with the movements of the vertebral column (whole spine) and the control of posture. Deep muscles are associated with movements of the vertebral cilium (whole spine)."
26. It is apparent from these comments that Ms Vlasov, who had the benefit of treating the applicant over a lengthy period, was of the view the applicant's neck pain was due to the lumbar injury at issue. When taken with Dr Mendelsohn's analysis of the findings in relation to the onset of the symptoms in the neck, albeit his mischaracterisation of it as a frank injury rather than a consequential condition, I find this opinion persuasive and prefer it to that of Dr Panjraton. I find Ms Vlasov has explained the cause behind the onset of neck symptoms following the lumbar spine injury on a common-sense basis sufficient to satisfy the requirements of *Kooragang*, which are discussed at [12] above.
27. In my view, Dr Panjraton's latest report accepted the plausibility of an aggravation of the neck. Although he said that aggravation had settled at the time of his examination, the doctor provides no reason for so finding. Dr Panjraton said the examination of the cervical spine on 7 March 2019 was "normal", however, he did not set out findings to suggest any examination was in fact carried out. Absent at least some details of the examination of the cervical spine undertaken and the findings elicited from it, I am not minded to accept Dr Panjraton's opinion concerning the neck.

## SUMMARY

28. For the above reasons, I am satisfied on the balance of probabilities that the applicant suffered a consequential condition to his cervical spine as a result of the accepted injury to his lumbar spine. The matter will therefore be remitted to the Registrar for referral to an Approved Medical Specialist to determine the permanent impairment to those body systems, on the terms set out at page one of the Certificate of Determination.