WORKERS COMPENSATION COMMISSION

CERTIFICATE OF DETERMINATION

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

Matter Number: **2270/19**
Applicant: **ROBERT (BOB) CHARLES ARNOLD**
Respondent: **CHUBB SECURITY SERVICES LIMITED**
Date of Determination: **22 JULY 2019**
Citation: **[2019] NSWWCC 248**

The Commission determines:

1. The applicant in the course of his employment on or about 14 March 2003, tripped on a metal grate and suffered injury to his right ankle (the injury).

2. As a result of the injury, the applicant suffered consequential conditions to his left ankle and lumbar spine.

3. I remit the matter to the Registrar for referral to an Approved Medical Specialist (AMS) (Orthopaedic Surgeon) to determine the extent of the applicant's whole person impairment, if any, which results from injury to his right lower extremity and consequent left lower extremity and lumbar spine conditions and scarring.

4. I request the Registrar place before the AMS a copy of the Application to Resolve a Dispute and attachments (Application), a copy of the Reply and attachments (Reply), a copy of the Application to Admit Late Documents dated 12 July 2019 and attachments (AALD) and a copy of these Reasons for Decision.

5. I direct the applicant's solicitor to file with the Registry within fourteen (14) days a copy of the AALD.

6. A general award is made in favour of the applicant in respect of section 60 expenses.

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

PHILIP YOUNG
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 PHILIP YOUNG, ARBITRATOR, WORKERS COMPENSATION COMMISSION.

A Jackson

Ann Jackson
Dispute Services Officer
As delegate of the Registrar

STATEMENT OF REASONS

BACKGROUND

1. Robert (Bob) Charles Arnold (the applicant) is a 68-year-old man who was employed by Chubb Security Services Limited (the respondent) as an Armoured Vehicle Operator. He alleges that on 14 March 2003, in the course of his employment he tripped and twisted his right ankle on a metal grate as a result of which he suffered injury to his right lower extremity (right ankle). The matter the subject of these proceedings relates to what the applicant says are consequential conditions suffered to his left lower extremity, to his lumbar spine and consequential scarring.

2. The respondent has accepted liability in respect of the right lower extremity and left lower extremity. The respondent denies liability in respect of any consequential injury to the lumbar spine and scarring. The applicant's case is that because of his injury to the right lower extremity and/or left lower extremity, he adopted an altered gait which resulted in a consequential condition to his lumbar spine and subsequent lumbar spine surgery.

3. The matter resolves to whether the lumbar spine condition was caused or materially contributed to by altered gait, if indeed the applicant can establish that he adopted an altered gait. The claim is that all relevant conditions should be referred to an Approved Medical Specialist (AMS) to determine the extent of the applicant's whole person impairment. A prior claim was made by the applicant in respect of the 14 March 2003 injury to right lower extremity which was the subject of a Complying Agreement dated 6 May 2009.

4. The applicant seeks a general order in respect of section 60 expenses, namely the costs of spinal surgery, medical attendances, analgesics, hospital and physiotherapy expenses and the like.

ISSUES FOR DETERMINATION

5. The issue for determination is whether or not the applicant suffered a consequential condition to his lumbar spine which was caused or materially contributed to by injury to his right lower extremity and/ or consequent left lower extremity condition.

PROCEDURE BEFORE THE COMMISSION

6. The matter came for conciliation and arbitration hearing in Newcastle on 12 July 2019. Mr S McMahon of Counsel and Mr A Pryor, Solicitor, appeared for and with the applicant. Ms L Goodman of Counsel appeared for the respondent.

7. Mr McMahon made application to amend Part 5.3 of the Application to Resolve a Dispute (the Application) to seek a general order for section 60 expenses. There being no objection, the amendment was granted.

8. Mr McMahon tendered the Application to Admit Late Documents (AALD) These documents were admitted into evidence without objection.

9. It was noted that page 72 of the Application should be withdrawn as it was irrelevant to the current matter.

10. The AALD was seen for the first time at the conciliation and arbitration hearing and it is appropriate that the applicant's solicitor file the AALD with the Registry within 14 days.

11. 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

12. The following documents were in evidence before the Commission and taken into account in making this determination:

    (a) Application dated 10 May 2019 and attached documents;
    (b) Reply dated 3 June 2019 and attached documents, and
    (c) AALD dated 12 July 2019 and attached documents.

Oral evidence

13. No oral evidence was given.

THE APPLICANT'S SUBMISSIONS

14. Mr McMahon submitted that as a result of the injury of 14 March 2003 to the applicant's right ankle he developed deformity, pain and stiffness and a limp. The applicant underwent two fusion operations to the right ankle and then developed a consequential left ankle condition which was subsequentially accepted by the respondent.

15. The applicant underwent surgery including removal of spurs on 6 May 2005 and gradually developed a limp such that by 2008 the limp was because he was favouring his left ankle to protect his right ankle and the applicant began to experience lower back pain and radiating leg pain.

16. The applicant in his statement says that he underwent 89 sessions of chiropractic treatment regarding back pain. All of the doctors accept the applicant suffered a limp and fusion surgery. Doctor D Dixon in his report of 1 July 2008 mentions that the applicant on 27 June 2008 walked "with a mild limp" and the applicant refers to this limp as having developed in 2008 and gives evidence concerning further symptoms in his lower back in 2010 (Application page 4). On 25 July 2011, the applicant underwent a CT scan of lumbosacral spine (Application page 112, 107) which demonstrated pathology in the lumbar spine, namely a large bulge at L1/2 and L2/3, a moderate bulge at L3/4 and L4/5 (the latter with impingement) and a small bulge at L5/ S1.

17. The applicant underwent physiotherapy under the care of Mr Hodgson on 30 August 2011 and Mr Hodgson noted 50% loss of range of movement in the applicant's lumbar spine (Application page 95), a 6-mm difference in height of the right hip relative to the left hip, and inferior tilting on the right at L4/L5.

18. Doctor M Hunter, Orthopaedic Surgeon, saw the applicant on referral from the applicant's general practitioner on 1 November 2011. Doctor Hunter noted on examination "an awful gait which certainly is putting stress on his knees and back". Doctor Hunter at Application page 76 expresses the view that "it is likely that his knee pain and back pain are related to his awful gait and his ongoing work".

19. On 14 November 2011, the applicant underwent surgery at the hands of Doctor Hunter.

20. Doctor M Coughlan in his report of 22 November 2013 obtained a history that the applicant had suffered lower back pain for 3 years. Doctor Coughlan identified problems at L4/5 and L1/2 from a previous CT scan. He noted that the applicant's gait changed significantly following his ankle injury and expressed the view "this would certainly have impacted on his back".

21. The applicant had a bone scan concerning his back on 27 November 2013. This scan identified changes at L1/2 and active facet joints on the right at L3/4 (moderate), on the right at L4/5 (severe) and bilateral at L5/S1 (severe). There was, accordingly, pathology present in the lumbar spine by that time.

22. On 17 December 2013, Doctor Hunter again refers to the applicant's "awful gait because of his right ankle". He also noted that the applicant was "putting a lot of weight on this, his knees and his back". This was identified in 2011.

23. Doctor Hunter's report of 19 May 2014 makes reference to the left ankle fusion which occurred on that day. The applicant at paragraph 43 of his statement (Application page 5) notes that his back pain deteriorated in 2014 and he developed "numbness and tingling in both feet".

24. The applicant ultimately underwent laminectomy under Doctor Coughlan, Neurosurgeon, on 6 June 2016. The applicant in his statement says that the surgery helped with the numbness in his feet but he still experienced some numbness in his right toe.

25. The applicant was seen by Doctor J Bodel on 28 April 2017 at the request of the applicant's solicitors. Doctor Bodel recorded a history of problems with the right ankle, left ankle and the applicant's awareness of pain in his neck and back in 2009. After referring to various diagnostic imaging Doctor Bodel goes further than the required test for consequential conditions in that he attributes (Application page 6), the applicant's very abnormal gait pattern over time and the ankle fusions to have caused "aggravation, acceleration, exacerbation and deterioration of disc pathology in the lumbosacral spine".

26. Doctor R Powell, Orthopaedic Surgeon, assessed the applicant for the insurer first on 23 September 2011. Doctor Powell (AALD page 13) records lower back pain complaints as well as radiating pain and noted antalgic gait and multilevel changes of lumbar spondylosis. In his further report of 20 December 2017 (Application page 19) Doctor Powell makes reference to the development of lower back pain and in relation to the lumbar spine (Application page 21) noted a "gradual deterioration of symptoms". On the question of causation, Doctor Powell (Application page 26) says that the lower back condition is likely to represent a constitutional disease process but says:

> "It is possible that the altered gait pattern associated with Mr Arnold's bilateral foot and ankle pathology has resulted in aggravation of the underlying degenerative change, though it would not be considered the main contributing factor in either the development or the aggravation of that condition.

Doctor Powell has approached the question of causation in an incorrect fashion. Doctor Powell's reference to the section 4(b)(ii) test "main contributing factor" is unnecessary. The correct test for consequential conditions is whether there is a causal link between the original injury and the consequential condition under consideration.

27. Doctor V Panjratan, Orthopaedic Surgeon, saw the applicant at the insurer's request on 28 February 2014. A history was given of neck and back pain since April 2010 and the doctor refers to a change in the applicant's gait resulting in lower back pain radiating down his legs. Doctor Panjratan diagnosed multilevel lumbar spondylosis, constitutional in nature, and concludes "there could have been some aggravation but the aggravating factor has now settled". Doctor Panjratan expresses an unusual opinion:

> "There is now a flow on effect to the left ankle, both knees, back and I am not sure what more is up for claims in the future! I am not sure where it is going to end. It has gone on from one part to another and there is no end in sight".

Mr McMahon submitted that Doctor Panjratan's comment supported the applicant in terms of his consequential back condition. Alternatively, if it was a cynical comment, it was not appropriate for Doctor Panjratan to be cynical about the matter. In summary, after the applicant's surgery in 2005 he developed an "awful gait" and a consequential left ankle condition. Adopting the reasoning in *Kooragang Cement Pty Ltd v Bates* (1994) 35 NSWLR 452 (*Bates*), this "awful gait" resulted in pain and disability in the applicant's lower back in 2008, physiotherapy in August 2011 and the pathology was identified by diagnostic imaging. The respondent's doctors accept that aggravation to the back could have happened and the applicant has support from Doctors Bodel and Hunter and additionally Doctor Coughlan saying that the gait "certainly impacted on the applicant's back". There is no break in the chain of causation and the applicant seeks that the matter be remitted to an AMS for assessment of the degree of whole person impairment with respect of the applicant's right ankle injury, consequential left ankle condition, consequential lumbar condition and scarring.

THE RESPONDENT'S SUBMISSIONS

28. Ms Goodman commenced her submissions by saying that Doctor Panjratan was in fact being cynical and this is evidenced by his comment on the following page of his report that "as far as the back is concerned I do not think it is work related".

29. According to Doctor Bodel, the applicant's back complaints commenced in April 2010 and reference is made to a CT scan of 29 April 2010 which is reported as showing degenerative changes. A bone scan showed increased facet arthritis at several levels. Assuming commencement of complaint by the applicant in April 2010, it is unclear what the applicant was doing at the time. The first operation to the applicant's right ankle was on 6 May 2005 and Doctor Morton on 23 September 2005 noted significant improvement in residual underlying arthritis and the applicant had a good result from his surgery.

30. The first time that limp or altered gait is mentioned is in Doctor Dixon's report of a "mild" limp on 1 July 2008. There was then the Complying Agreement in 2009 and no medical attendances concerning the back until the referral to CT scan on 29 April 2010. This CT scan was ordered by Doctor Galea, General Practitioner, in 2010 but there is no report from Doctor Galea concerning the applicant's complaints at that time. The start of the applicant's problems concerning his back is unexplained.

31. In order for the applicant to prove a back condition it is necessary for the applicant to "join the dots". There is insufficient evidence that the lumbar spine problem had any genesis from the applicant's ankles.

32. On 14 November 2011, the applicant underwent right ankle fusion and Doctor Hunter mentioned that the applicant had a relative good outcome.

33. Shortly before the right ankle fusion on 14 November 2011, Doctor Powell on 23 September 2011 recorded the complaint of lower back pain radiating to both lower limbs. There was reference to antalgic gait but the fact remains that the CT scan of 29 April 2010 showed multilevel degenerative changes in the nature of lumbar spondylosis.

34. Doctor Powell noted that the applicant's back pain was contributed to by his wearing of a bullet proof vest and expressed the view that the applicant's degenerative lumbar condition is constitutional in nature.

35. Doctor Powell saw the applicant again after both ankle fusions, on 20 December 2017. He noted that over the next few years since prior consultation the applicant was aware of increasing symptoms in the left ankle for which he ultimately came to left ankle arthrodesis. The applicant was in fact seeing Doctor Coughlan regarding his back complaints on 22 November 2013, namely before his left ankle fusion. The first mention of any altered walking pattern was the "mild" limp referred to by Doctor Dixon in 2008.

36. In Doctor Powell's report of 20 December 2017 (Reply page 28) the Doctor diagnoses multilevel degenerative pathology with surgery resulting in significant improvement and no radiculopathy. Although conceding that it is "possible" that an altered gait pattern has resulted in aggravation of degenerative changes, Doctor Powell says that the condition is likely to be merely a constitutional disease process. Doctor Powell's support for the applicant is based upon a history of back problems shortly after 2003, however the applicant had his first x-ray in 2010 and the Commission should not be satisfied that the applicant's back condition is a consequential condition.

APPLICANT'S SUBMISSIONS IN REPLY

37. The applicant states that his back pain came on from 2005 and certainly by 2008. Doctor Dixon noted a mild limp in 2008 and this is a ready explanation when considered with the applicant's evidence. According to the applicant, changes in his gait commenced in 2005 and it is clear that there is a connection in the causal chain resulting from this altered gait being caused by the right ankle condition.

FINDINGS AND REASONS

38. In relation to Ms Goodman's submission concerning insufficient evidence that the applicant's lumbar spine problem had any genesis from the applicant's ankles. Roche DP in *Australian* Traineeship *System v Turner* [2012] NSWWCCPD 4 (*Turner*) rejected a similar submission. The employer had in that matter submitted that there was no corroborative evidence that the left elbow symptoms were causally related to the right shoulder injury. This rejection was because the submission did not consider that in a civil matter, corroboration is not required (considering *Chanaa v Zarour* [2011] NSWCA 199 at [86])

39. In *Turner*, explaining this position, Roche DP said (at [43]):

> "It also ignores that fact that the Commission is entitled to rely upon common-sense in evaluating questions of causation (*Adelaide Stevedoring Co Ltd v Forst* [1940] HCA 45… *Tubemakers of Australia Ltd v Fernandez* (1976) 50 ALJR 720 per Mason J [at 725]. Commonsense suggests that, if Mr Turner was doing mere work with his left arm, because he was favouring his right shoulder, as he said in his statement dated 16 December 2003, then the symptoms he developed in his left elbow (and later his left shoulder) have resulted from the injury to the right shoulder. The evidence gives much further than merely relying on commonsense inference".

40. His Honour Roche DP had a similar issue (in the context of "injury" as compared to "consequential condition") to consider in *Bouchmouni v Bakkos Matta t/as Western Red Services* [2013] NSWWCCPD 4 (*Bouchmouni*). Whilst principally dealing with issues as to res judicata estoppels, his Honour discussed the principles of causation for consequential conditions established by *Bates* and pointed out (at [73]):

> "73. The same principles apply in the present case. It was no part of Mr Bouchmouni's duties to have surgery on his knee or to walk with an uneven gait. Those things arose because he suffered an injury to his knee in the course of his employment. If a further medical condition has resulted from the treatment of the knee injury (or from the altered gait because of knee symptoms), as has happened in this case, that condition (the back condition) has resulted from the injury but is not itself an 'injury'".

41. I refer in general terms to *Turner* and *Bochmouni* only for the purpose of extracting general principles. I am mindful that the determinations of fact in these cases does not provide any precedent for similar factual findings in the current matter.

42. The applicant's credibility is not in issue in this matter. None of the doctors who have examined the applicant have made any adverse comment regarding his truthfulness or cooperation during examination. The respondent does not challenge the applicant's evidence concerning his various returns to work, the circumstances of his right ankle injury and his post-accident medical treatment. There is no challenge to the applicant's complaints regarding the effect his injury has had on his social life and other continuing disabilities.

43. There are no real inconsistencies in the various histories given by the applicant to the various doctors. Doctor Powell in his report of 23 September 2011 notes at AALD page 17:

> "Mr Arnold was a most compliant and cooperative patient throughout the taking of the history and examination. There was no suggestion of overreaction or exaggeration".

44. Because of the absence of real inconsistencies and the non-existence of overreaction or exaggeration, I am comfortably satisfied that I can accept the matters referred to in the applicant's statement as a credible and honest account of the pain and other symptoms he experienced at various times since his accident in 2003.

45. The applicant was referred by his general practitioner at the time, Doctor C Livermore, to Doctor J Morton, Orthopaedic Surgeon. Doctor Morton reviewed the applicant on 23 September 2005 which was about five months after his osteophytectomy. At that time, he had a "residual underlying arthritic ache which is minimal". Following the osteophytectomy in May 2005 the applicant was certified fit to return to normal duties from 23 May 2005 (see Doctor Morton's report 20 May 2005 at Application page 117). The picture therefore in relation to the right ankle is that the applicant gradually got better through 2005 although he was performing his normal duties. The picture is in my view also consistent with a worker honestly endeavouring to return to work.

46. In the applicant's statement dated 12 November 2018, he says that despite returning to work following the surgery the majority of his body weight was placed on the left leg and he was walking with a significant left sided limp. In ascending stairs, he was leading with his left leg. In performing domestic duties such as vacuuming his right leg was essentially stationery and took little weight. He used only his left leg to take all of the weight when getting himself off the ground. The applicant's statement suggests that between 2005 and his scan on 21 August 2007 he walked with an altered gait and noticed increasing back pain (Application

page 3). His right ankle continued to deteriorate and ultimately injections were administered in the right ankle in 2008.

47. At paragraph 34 of his statement (Application page 4) the applicant says:

> "34. Unfortunately, over time my right ankle deteriorated. By 2008, I noticed that I was walking with an altered gait. Essentially, I was favouring my left ankle to protect the right ankle. I began to suffer back pain which radiated down my right leg and into my knee. My back pain at the time was easily aggravated by periods of prolonged sitting. During this period, I began to see a chiropractor to assist me with my back complaints. I attended upon a Chiropractor at Platinum Chiropractic and have ultimately paid for 89 sessions of chiropractic treatment out of my own pocket which assisted in managing my complaints".

48. Doctor Dixon examined the applicant at the request of his then solicitors, Keddies, on 27 June 2008. In his report of 1 July 2008, Doctor Dixon noted "he walked with a mild limp and had marked difficulty on toe and heel walking and there was stiffness in his ankle on attempted squat testing. He had difficulty taking all his weight on his right ankle due to a feeling of instability". The point to be made in my view is that Doctor Dixon observed more than a "mild limp". The reference to ankle stiffness and difficulty taking weight on the right ankle raise an inference of favouring of the left [sic-right] ankle.

49. It would appear from the report of 1 July 2008 that Doctor Dixon was addressing only the right ankle, however, it is to be inferred from his report that the applicant did present with a limp (and other difficulties), albeit described by Doctor Dixon as "mild". The applicant's presentation to Doctor Dixon with a limp is in my view consistent with the matters raised by the applicant in his statement concerning favouring his right ankle.

50. There are two reports of Platinum Chiropractic (Mr Hodgson) in evidence dated 30 August 2011 and 12 October 2011 respectively. The report of 30 August 2011 confirms that the applicant had been attending the chiropractor for "an ongoing low back problem…as a result of a change in his gait and the alignment of his right hip from the injury to his right ankle". The report does not indicate for how long the applicant had been seeing Platinum Chiropractic. The reference to "ongoing" is not, however, inconsistent with the applicant's statement concerning the date of onset of his lower back problems. Mr Hodgson having looked at x-rays noted a 6-mm difference in the height of the applicant's right hip compared to the left and right inferior tilting at L4/L5.

51. The insurer sent the applicant for examination with Doctor R Powell which occurred on 7 September 2011 and is the subject of Doctor Powell's report of 23 September 2011, relied upon by the applicant. Doctor Powell noted complaints of a constant dull ache in the mid line in the applicant's back spreading bilaterally and radiation down the posterior aspect of the right leg to the knee. In terms of the back "injury" Doctor Powell was asked whether the applicant's employment is a substantial contributing factor and in reply Doctor Powell although not using that terminology, answers that "I believe it is most likely that his degenerative lumbar spine condition is constitutional in nature". This was because the applicant "is noted to be suffering from osteoarthritis affecting his…lower back…which suggest a constitutional contribution".

52. The difficulty with Doctor Powell's report in terms of the causation issue is that whilst he notes osteoarthritis presents a constitutional "contribution" he does not address the question as to whether the applicant's pain and symptoms in his lower back were caused or materially contributed to by the injury to his right ankle and resultant altered gait. This is despite the fact that on examination of the right ankle (AALD page 17) Doctor Powell noted "an antalgic gait

with a shortened stance phase on the right side". The existence of a "constitutional contribution" by osteoarthritis is not, in my view, the determinative test.

53. In Mr Hodgson's second report dated 12 October 2011 (Application page 96) the chiropractor noted that the applicant's condition deteriorated quite rapidly (in terms of the lumbar spine) due to his loss of mobility due to the right ankle injury.

54. Doctor Hunter, Orthopaedic Surgeon, saw the applicant and provided a report dated 1 November 2011. Doctor Hunter on examination noted the applicant's "awful gait" which "is certainly putting stress on his knee and his back".

55. The applicant's general practitioner in 2013 referred the applicant to Doctor Coughlan. The history is given by the applicant that he had lower back pain for three years (that is to say, from 2010) and prior surgery for his ankles with Doctor Hunter. Doctor Coughlan reports (22 November 2013):

> "According to him when he hurt his ankle his gait changed significantly as a result of the ankle injury. This would certainly have impacted on his back".

56. Doctor Michael Hunter reported to Doctor Galea, General Practitioner, on 17 December 2013. Whilst Doctor Hunter recommended left ankle joint fusion, he did reiterate his earlier consultation with the applicant on 2011. Doctor Hunter reports:

> "This was initially identified back in 2011. At the time we felt, due to his awful gait because of his right ankle, that he was putting a lot of weight on this, his knees and his back and I felt that degeneration certainly was implicated because of his right sided problems. Now the right side has been fused and his gait from this is better but his left is worn out, there is bone-on-bone degeneration predominately in the ankle joint".

57. The applicant saw Doctor Panjratan at the request of the insurer on 28 February 2014. In terms of the applicant's present condition regarding his back, the applicant told Doctor Panjratan that he "started developing neck and back pain and started getting something done about it in April 2010 when x-rays were done". Doctor Panjratan claimed that the applicant had "multilevel lumbar spondylosis, constitutional in nature" (Application page 102) and conceded "there could have been aggravation but the aggravating factor has now settled" (Application page 103).

58. Doctor Panjratan does not provide an explanation as to why or how the aggravating factor in terms of the applicant's back condition "has now settled". Certainly, in my view the applicant's back symptoms had <u>not</u> "settled" and there is no explanation offered by Doctor Panjratan as to how, why and when any aggravation had "settled".

59. Doctor Bodel examined the applicant on 28 April 2017. He obtained a history that the applicant's neck and back pain "came on in about the year 2009, again associated with his abnormal gait pattern, which had been present over a long period of time". Doctor Bodel concludes (Application page 6):

> "…clearly this gentleman has had a very abnormal gait pattern for a long time and still persists because of the fusions and that has in my view caused aggravation, acceleration, exacerbation and deterioration of the disc pathology in the lumboscacral spine as there is no evidence of any other accident or injury of any significance".

60. In relation to Doctor Powell's report of 20 December 2017, he does not refer specifically to the CT scan of the lumboscacral spine dated 29 April 2010. At Application page 23, Doctor Powell itemises investigations between 16 September 2011 and 2 February 2016. In arriving at his diagnosis (Application page 24), Doctor Powell appears to chronologically place the development of chronic low back pain after investigations in 2014. This would appear despite the fact that in his earlier report of 23 September 2011, Doctor Powell had access to the CT scan of the lumbosacral spine dated 29 April 2010. To the extent that Doctor Powell's December 2017 diagnosis concerning the lower back condition does not appear to reference the 2010 lumbar CT scan, the diagnosis is somewhat deficient.

61. Regardless, Doctor Powell accepts that:

> "It is possible that the altered gait pattern associated with Mr Arnold's bilateral foot and ankle pathology has resulted in aggravation of the underlying degenerative change, though it would not be considered the main contributing factor in either the development or the aggravation of that condition".

62. Again, there is a misapplication of the relevant test of causation established in *Bates* and discussed in many further cases, including *Turner* and *Bouchmouni*.

63. I am comfortably satisfied that the applicant's evidence concerning deterioration of his right ankle condition was such that by 2008 he was walking with an altered gait and suffering back pain later radiating down his right leg and into his knee. The vast majority of medical evidence supports a commonsense causal connection between the right ankle injury and the applicant's lower back condition because of the altered gait. Some of the Doctors' conclusions concerning the underlying constitutional condition being the cause of the applicant's lower back condition are deficient for the reasons mentioned.

64. Finally, there were no submissions advanced by either party concerning whether the applicant's lumbar spine medical treatment was reasonably necessary. I believe it follows from my finding concerning consequential lumbar spine condition that it is appropriate to make a general award in favour of the applicant in respect of section 60 expenses.

SUMMARY

65. The applicant in the course of his employment on or about 14 March 2003 tripped on a metal grate and suffered injury to his right ankle (the injury).

66. As a result of the injury, the applicant suffered consequential conditions to his left ankle and lumbar spine.

67. I remit the matter to the Registrar for referral to an AMS (Orthopaedic Surgeon) to determine the extent of the applicant's whole person impairment, if any, which results from injury to his right lower extremity and consequent left lower extremity and lumbar spine conditions and scarring.

68. I request the Registrar place before the AMS a copy of the Application, a copy of the Reply, a copy of the AALD and a copy of these Reasons for Decision.

69. I direct the applicant's solicitor to file with the Registry within 14 days a copy of the AALD.

70. A general award is made in favour of the applicant in respect of section 60 expenses.