

WORKERS COMPENSATION COMMISSION

CERTIFICATE OF DETERMINATION

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

Matter Number: 5273/19 & 5274/19
Applicant: Evonne Trita Ward
Respondent: Lowes-Manhattan Pty Ltd
Date of Determination: 4 February 2020
Citation: [2020] NSWCC 34

The Commission determines:

1. The applicant's incapacity for work as a result of her injury on 14 March 2017 is likely to be of a permanent nature pursuant to s 53(1) of the *Workers Compensation Act 1987* (the 1987 Act).

The Commission orders (by consent):

1. In accordance with the Award for weekly benefits made by Arbitrator Egan on 6 January 2020, the respondent to pay the applicant weekly benefits as follows:
 - (a) pursuant to s 37 of the 1987 Act:
 - (i) \$491.76 gross per week from 14/03/2018 to 31/03/2018;
 - (ii) \$496.74 gross per week from 01/04/2018 to 30/09/2018;
 - (iii) \$501.97 gross per week from 1/10/2018 to 31/03/2019;
 - (iv) \$506.82 gross per week from 01/04/2019 to 08/09/2019; and
 - (b) pursuant to s 38 of the 1987 Act:
 - (i) \$506.82 gross per week from 09/09/2019 to 30/09/2019;
 - (ii) \$509.90 gross per week from 1/10/19 to date and continuing.
2. The respondent to receive credit for weekly payments already made during the periods set out at Order 1 above.
3. Proceedings 5274/19 are discontinued and the need to file an Election to Discontinue dispensed with.

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.

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Senior Dispute Services Officer
As delegate of the Registrar



STATEMENT OF REASONS

1. Evonne Ward (the applicant) suffered an injury during the course of her employment with Lowes Manhattan Pty Ltd (the respondent) on 14 March 2017 when she fell off a ladder whilst performing her role as a retail assistant. The applicant injured her left knee, left foot and ankle and her back in the incident.
2. On 10 October 2019, the applicant filed an Application to Resolve a Dispute (5273/19) seeking an award of weekly benefits. An Application for Assessment by an Approved Medical Specialist (5274/19) seeking certification pursuant to s 53(1) of the *Workers Compensation Act 1987* (the 1987 Act) that her incapacity as a result of injury was likely to be permanent in nature was filed on the same date.
3. The proceedings were brought by the applicant to facilitate the continuation of weekly payments, pursuant to s 53 of the 1987 Act, when she departed Australia with the intention of returning to her home country of the United States of America.
4. The matters proceeded to conciliation and arbitration before Arbitrator Egan on 18 December 2019. On 6 January 2020, Arbitrator Egan issued a Certificate of Determination in which he determined that the applicant had been underpaid in respect of voluntary payments of weekly benefits made by the respondent and was entitled to an award for past weekly benefits. Additionally, the applicant was entitled to an award for weekly benefits on an ongoing basis. Arbitrator Egan ordered the parties to submit proposed Consent Orders consistent with his determination.
5. At teleconference on 3 February 2020, the parties informed me that they had reached agreement with regard to the award of weekly benefits. Orders will be made by consent in accordance with their agreement and the award of Arbitrator Egan on 6 January 2020.
6. The application for certification pursuant to s 53(1) of the 1987 Act remains unresolved.
7. The statement of reasons prepared by Arbitrator Egan reveals that at conciliation and arbitration on 18 December 2019, there was no contest as to the applicant's incapacity for work nor the extent of it. The parties proceeded on the basis that the applicant had no current work capacity. There was no dispute as to the applicant's incapacity being likely to be of a permanent nature.
8. The applicant relies upon her written statement, medicolegal reports prepared by Dr AG Hopcroft, dated 2 July 2019, and a report from her general practitioner, Dr Andrew Croaker, dated 5 June 2019, in support of her claim that her incapacity as a result of injury is likely to be permanent.
9. The applicant's medical evidence indicated that her prognosis was poor. Dr Hopcroft was of the view that the applicant was unfit to contemplate a return to any form of work due to ongoing and minimally controlled low back and left knee restrictions. Dr Hopcroft found the applicant had reached maximum medical improvement and assessed her as having 19% whole person impairment as a result of the injury. Dr Croaker gave the opinion that the applicant "may never be able to return to the workforce" as a result of the injury.
10. No evidence has been adduced by the respondent to contradict the applicant's claim. At teleconference on 3 February 2020, no objection was raised by the respondent to the Commission proceeding to make a determination pursuant to s 53(1) of the 1987 Act on the evidence before it without the need for referral to an Approved Medical Specialist for certification.

11. In all the circumstances and having regard to the evidence referred to above, I am satisfied that the applicant's incapacity for work resulting from the injury is likely to be of a permanent nature and so determine for the purposes of s 53(1) of the 1987 Act.

