WORKERS COMPENSATION COMMISSION

STATEMENT OF REASONS FOR DECISION OF THE APPEAL PANEL IN RELATION TO A MEDICAL DISPUTE

Matter Number:	**M1-4280/20**
Appellant:	**OneSteel Manufacturing Pty Ltd**
Respondent:	**Ian Haggath**
Date of Decision:	**16 February 2021**
Citation No:	**[2021] NSWWCCMA 32**

Appeal Panel:	
Arbitrator:	**John Wynyard**
Approved Medical Specialist:	**Dr Robert Payten**
Approved Medical Specialist:	**Dr Joseph Scoppa**

BACKGROUND TO THE APPLICATION TO APPEAL

1. On 5 November 2020 OneSteel Manufacturing Pty Ltd, the appellant employer, lodged an Application to Appeal Against the Decision of Approved Medical Specialist. The medical dispute was assessed by Dr Brian J Williams, an Approved Medical Specialist (AMS), who issued a Medical Assessment Certificate (MAC) on 27 October 2020.

2. The appellant relies on the following grounds of appeal under s 327(3) of the *Workplace Injury Management and Workers Compensation Act 1998* (1998 Act):

    - the MAC contains a demonstrable error.

3. The Registrar is satisfied that, on the face of the application, at least one ground of appeal has been made out. The Appeal Panel has conducted a review of the original medical assessment but limited to the ground(s) of appeal on which the appeal is made.

4. The WorkCover Medical Assessment Guidelines set out the practice and procedure in relation to the medical appeal process under s 328 of the 1998 Act. An Appeal Panel determines its own procedures in accordance with the WorkCover Medical Assessment Guidelines.

5. The assessment of permanent impairment is conducted in accordance with the *NSW Workers Compensation Guidelines for the Evaluation of Permanent Impairment, 4th* ed 1 April 2016 (the Guidelines) and the *American Medical Association Guides to the Evaluation of Permanent Impairment,* 5th ed (AMA 5). "WPI" is reference to whole person impairment.

RELEVANT FACTUAL BACKGROUND

6. On 8 September 2020 the delegate of the Registrar referred this matter to an AMS for assessment of WPI caused by hearing loss deemed to have occurred on 14 October 2009.

7. Mr Haggath's wife first noticed the onset of his bilateral gradually progressive hearing loss about 20 years ago.

8. He was born in 1945. In 1981 he migrated to Australia. His occupational history was correctly recorded by the AMS[1]:

> **"OCCUPATIONAL HISTORY**
>
> • Onesteel Manufacturing Pty Ltd 1996-2009 as Inspector. He said he retired due to leukaemia. He said he was exposed to the noise of milling machines, steel-making, forklifts, cranes, banging steel, coiling metal, air tools and furnaces. He said he was in noise 8 – 12 hours per day, 4-6 days per week. He said he had to raise his voice to have a conversation at 1 metre and sometimes shout. He said hearing protection was worn during this period of employment.
>
> • Tomago Aluminium (NSW) 1983-1995 (on the pot-line) as a Crane Operator/Forklift Driver/Labourer/Section Controller. He said he was exposed to the noise of cranes to change Anodes, replacement of parts on pot-line, forklifts, jackhammers, hoppers, and melting aluminium into ladles. He said he did not work in the workshop. He said he was in noise 8 hours per day 5 days per week. He said he did not have to raise his voice to have a conversation at 1 metre. He said hearing protection was worn during this period of employment.
>
> • BHP (NSW) for 2 years as a Labourer. He said he was exposed to the noise of the blast furnace, jackhammers and rammers. He said he was in noise 8 hours per day 6 days per week. He said he had to raise his voice to have a conversation at 1 metre. He said hearing protection was worn during this period of employment.
> • UK as a Mechanic/Labourer from age 15 to 34 years, (19 years).
>
> **1.** Car Mechanic for 16 years in a garage. He said this was not noisy.
> **2.** Steelworks for about 3 years. He said he was exposed to the noise of the blast furnace, jackhammers and rammers. He said he was exposed to noise for 8 hours per day 6 days per week. He said he had to raise his voice to have a conversation at 1 metre. He said hearing protection was worn during this period of employment."

9. The AMS found a 13% WPI.

PRELIMINARY REVIEW

10. The Appeal Panel conducted a preliminary review of the original medical assessment in the absence of the parties and in accordance with the WorkCover Medical Assessment Guidelines.

11. The appellant employer did not seek to have the injured worker re-examine by an AMS who was a member of the Panel.

EVIDENCE

Documentary evidence

12. The Appeal Panel has before it all the documents that were sent to the AMS for the original medical assessment and has taken them into account in making this determination.

Medical Assessment Certificate

13. The parts of the medical certificate given by the AMS that are relevant to the appeal are set out, where relevant, in the body of this decision.

[1] Appeal papers 41.

SUBMISSIONS

14. Both parties made written submissions which have been considered by the Appeal Panel.

FINDINGS AND REASONS

15. The procedures on appeal are contained in s 328 of the 1998 Act. The appeal is to be by way of review of the original medical assessment but the review is limited to the grounds of appeal on which the appeal is made.

16. In *Campbelltown City Council v Vegan* [2006] NSWCA 284 the Court of Appeal held that the Appeal Panel is obliged to give reasons. Where there are disputes of fact it may be necessary to refer to evidence or other material on which findings are based, but the extent to which this is necessary will vary from case to case. Where more than one conclusion is open, it will be necessary to explain why one conclusion is preferred. On the other hand, the reasons need not be extensive or provide a detailed explanation of the criteria applied by the medical professionals in reaching a professional judgement.[2]

17. The appellant employer submitted that the AMS had fallen into error in three respects.

18. It was submitted that the low tone frequencies should not have been included in the calculation of binaural hearing loss.

19. In the alternative it was submitted that the AMS failed to provide reasons for including hearing loss at those frequencies.

20. Thirdly, it was alleged that the AMS was required, in the circumstances, to make a s 323 deduction.

Ground 1 – the low frequencies

21. In his Summary, the AMS said:[3]

> "[Mr Haggath] has suffered from occupational noise exposure causing right partial and bilateral occupational noise induced hearing loss, and an equal amount in the left ear. He also has left hearing losses in excess of the right ear which are of uncertain aetiology."

22. The AMS recorded the method by which he performed his pure tone audiometry and the results of his audiogram were given in tabulated form.[4]

23. The results of the audiogram conducted by the AMS showed a total of 35.8% BHI, and that he had deducted an amount of 4.8% for what was described in the audiogram as "Pre-existing non-related loss."

24. The amount of 4.8% derives from the addition of the difference between the two totals shown in the columns entitled "Total BHI" and "Occupational BHI."

25. In explaining his methodology, the AMS said:[5]

> "…Physical examination and pure tone audiometry indicate a bilateral sensorineural hearing loss maximal in the high frequencies and left conduction hearing loss. The responses I obtained upon pure tone audiometry are repeatable on ascending and descending threshold measurement and I considered them

[2] This dicta applies also to the duty of an AMS to give reasons: *Jones v The Registrar WCC* [2010] NSWSC 481 at [34] per James J.
[3] Appeal papers page 42
[4] Appeal papers page 43
[5] Appeal papers page 43

to represent accurate auditory thresholds. The configuration of his sensorineural hearing loss is not one wholly caused by his occupational noise exposure as described above.

Therefore, considering his medical history and physical examination including pure tone audiometry, I formed the opinion that his right sensorineural hearing loss and an equal amount in the left ear are caused by occupational noise exposure. The left hearing losses in excess of the right are mainly conduction hearing losses and are of uncertain aetiology."

SUBMISSIONS

Appellant employer

26. The appellant employer referred to a number of cases determined by Medical Appeal Panels that low tone frequency hearing deficits can be assessed as occupational BHI, depending on the facts of each case. This is now commonly accepted, and no useful purpose is served by rehearsing the opinions in each of the cited cases. Mr Haggath did not seek to argue otherwise.

27. The appellant employer submitted that the AMS had not referred to the facts he relied on for including the low tones – a submission that probably belonged with its second ground – and that the AMS's only remark about the audiogram was that the hearing loss was not equal on each ear.

28. The appellant employer submitted that the AMS made no other comments about the configuration of the audiogram.

29. Criticism was made that the AMS produced an audiogram in tabular form (rather, we assume than diagrammatic). It was submitted that therefore the "shape" of the audiogram was not demonstrated. The shape of the audiogram was a relevant factor in determining whether it demonstrated a typical noise induced hearing loss, it was submitted.

30. We were referred to *Xuereb v G.A.M.E.S Pty Ltd (Deregistered)*[6], in which the low tone losses had been excluded because the audiogram had not demonstrated a shape typical of what would be expected in an audiogram that demonstrated occupational hearing loss. In the present case all the AMS had said about the audiogram, it was submitted, was that the hearing loss therein demonstrated was not wholly caused by exposure to occupational noise.

31. The audiogram was not consistent with what could be expected from an audiogram that was typical of occupational hearing loss, and accordingly without any further explanation, the AMS had fallen into error by including the low tones in his assessment.

Respondent worker

32. Mr Haggath's response was quite thorough. Mr Haggath noted that there was no challenge to the AMS's approach in taking as his base line the BHI in the better left ear.

33. Mr Haggath agreed the audiogram was not in the shape usually found in noise induced hearing loss, simply because there was this asymmetry which the AMS dealt with by taking the hearing impairment in the better ear as his base line.

34. Thus, if one looked at the shape of the audiogram regarding the right ear, the required descending line from the low to the high frequencies was present it was submitted. We were referred to a number of Medical Appeal Panel cases regarding the circumstances under which the low tones can be included in an assessment of occupational hearing loss, and as

[6][2013] NSWWCCMA 50

to the expected shape of an audiogram. If for instance hearing thresholds at 4000Hz were better than those at 3000Hz or 6000Hz, it was unlikely that the lower thresholds will be included as occupational hearing loss.

Discussion

35. We are grateful for the thorough preparation of the parties' submissions, but the issue may be decided shortly.

36. The AMS found that some of the hearing loss within the left ear was not due to noise exposure, but consisted of mainly conduction hearing losses of uncertain aetiology. As we indicated, in his audiogram the AMS referred to that part of the hearing loss as "Pre-existing non-related loss." That description is not necessarily accurate, as it may have developed at the same time as the onset of the occupational deafness, and not been "pre-existing" at all.

37. Be that as it may, the result of the presence of this non-related loss was that indeed the audiogram did not conform to the expected shape typical of exposure to industrial noise. The AMS had to make an adjustment for that part of the hearing loss in the left ear that was not caused by noise exposure. This he explained in the passages we have reproduced above.

38. By way of illustration, we have taken the two figures given in the AMS's audiogram for "Total BHI%" and "Occupational BHI%" and added a further column demonstrating the difference allowed by the AMS on account of the unrelated hearing loss detected in Mr Haggath's left ear. The addition of the figures in the further column comes to the 4.8% that was deleted from the total BHI of 35.8%. When applied to the further deductions at page 44 of the MAC, that figure resulted in the 13% WPI assessed by the AMS.

Frequency Hz	**Total BHI**	**Occupational % BHI**	**Occupational % BHI adjusted for imbalance caused by left ear additional non related hearing impairment**
500	4.3	2.8	1.5
1000	7.3	5.7	1.6
1500	7.1	6.4	0.7
2000	6.6	6.1	0.5
3000	5.1	4.8	0.3
4000	5.4	5.2	0.2

Ground 2 – Failure to give reasons

39. The AMS said that the facts upon which he basis his assessment were[7]:

> "My medical history, my physical examination, my pure tone audiometry, NSW workers compensation guidelines for the evaluation of permanent impairment, 4th edition, 1st April 2016, and the 1988 NAL Tables for determining the percentage loss of hearing as prescribed in the Guides and AMA5 where applicable."

[7] Appeal papers 42/43

40. At paragraph 10c of his reasons, the AMS commented on the reports of other specialists in the matter.[8] He said that he had read and considered the reports, but that he preferred "my history, examination, audiogram and assessment" in relation to each one. He also differed with one aspect of the employer's medico-legal expert, Dr Fernandes, regarding the application of s 323 of the 1998 Act, which will be discussed when considering the employer's third ground of appeal.

Submissions

41. The appellant employer referred to *Kevin Burke v Eastland Engineering Pty Ltd,*[9] where the AMS explained that he did not include the low frequencies because the results of the audiogram were not consistent with noise induced hearing loss at that level. This was upheld by the Medical Appeal Panel.

42. In contrast, it was alleged that the AMS in the present case did not give any or any adequate reasons for including the losses at that level. It was submitted that the only reasons the AMS had given were "inadequate comments about the shape of the audiogram," which we take to be part of the quote we have reproduced above when discussing the first ground of appeal, when the AMS was discussing the unrelated conduction hearing loss in the left ear.

43. The appellant employer said that the AMS had before him the opinions of the medico-legal specialists on both sides of the record, both of whom gave reasons for either including or excluding the low tone frequencies. The AMS had not attempted to give any or adequate reasons regarding the acceptance of the low tones as being occupational BHI, nor had he discussed the opinions of those experts, it was submitted.

Respondent worker

44. Mr Haggath referred us to the history of exposure which we have reproduced under the relevant factual background, above that constituted a history of the intensity, duration and frequency of the noise exposure with each employer, and when combined with the explanation that the AMS gave as to the basis of his findings which included the medical history, it could be seen that adequate reasons had been given. Mr Haggath also relied upon the fact that the AMS said he used clinical judgment when interpreting the audiogram and the history.

45. Mr Haggath submitted that the submission that there was a failure to give adequate reasons had no basis. It was argued that there was no alternative conclusion in view of the discussion by the AMS about the audiogram and the involvement of the greater loss of hearing in the left ear which was not attributable to exposure to industrial noise.

46. We were referred to *Burke* and particularly paragraphs 41 and 42 where the Panel in that case said[10]:

> "41. The AMS has considered the nature and duration of occupational noise exposure as well as the nature and extent of the hearing losses at the relevant frequencies. Based on those considerations the AMS has exercised his clinical judgement to arrive at the conclusion expressed in the MAC.
>
> 42. Although experts may disagree in the interpretation of the material available to the AMS, the conclusion reached by the AMS was open to him as a matter of clinical judgement. Demonstrable error has not been established."

[8] Appeal papers page 44.
[9] [2020] NSWWCCMA 28 (*Burke*).
[10] Appeal papers 28.

47. It was submitted that the same reasoning applied in the present matter and that there was no alternative conclusion available on the evidence that was before the AMS.

Discussion

48. As we observed at the beginning of these reasons, an AMS is required to give reasons – particularly when there is more than one conclusion available on the evidence. In this case, contrary to the submissions of the worker, there was more than one conclusion available, namely, whether the evidence established that the low tone hearing loss was attributable to occupational noise exposure or not.

49. The issue was clearly raised by the conflict in the opinions of the experts. Dr Paul Fagan thought that the low tones were affected,[11] whilst Dr Fernandes did not.[12] Whilst an AMS' reasons are not required to be extensive or to provide a detailed explanation, nonetheless some explanation is required. We do not consider that the AMS' explanation was adequate. It is true that he set out in acceptable detail Mr Haggath's extensive work history earlier on in his reasons, but his explanation as to why he differed from the opinion of Dr Fernandes and accepted that of Dr Fagan was non-existent.

50. The attempted justification by Mr Haggath for the AMS' findings sought to relate the earlier history to the declaration by the AMS that he had based his assessment on "my medical history." However, that did not satisfy the obligation of the AMS to explain why that history justified the inclusion of the low tone frequencies as occupational BHI.

51. We accordingly find this ground to be made out, and now turn to consider whether the inclusion of the low tones was justified.

52. In *Shone v Country Energy*[13] it was held that frequencies below 2000Hz can be assessed as occupational BHI provided the facts in any particular case justified such a finding. The facts primarily require evidence of a long duration of exposure to industrial noise of such intensity that would be likely to justify the appearance of the audiogram. Both parties relied on *Shone*, and the many subsequent cases that have adopted that opinion.

53. Provided evidence to that effect is present, it is then a matter for the clinical judgement of an AMS, whether to include the low tone frequencies. The AMS set out Mr Haggath's occupational history in some detail, as we have indicated, and it demonstrates both a long duration of exposure to noise for 49 years, and a high intensity of noise since 1981 when he migrated to Australia, working around heavy and loud machinery in the heavy manufacturing industry.

54. The audiogram, when balanced against the adjustment required for the unrelated hearing loss in the left ear, is consistent in its appearance with the low tone frequencies having been affected by occupational BHI.

55. Accordingly, the requisite evidence was before the AMS, and it therefore became a matter or his clinical judgement whether to include the low tone frequencies as occupational BHI. It would have been helpful had the AMS been somewhat less economic with his reasoning process, but we are unable to find any error in his final conclusion.

Ground 3 – section 323

56. The AMS noted that there had been a prior claim in 1994 of 0.84% binaural hearing loss[14].

[11] Appeal papers page 69.
[12] Appeal papers page 91.
[13] (2007) NSWWCCMA 18.
[14] Appeal papers page 43.

57. In considering his audiogram, he said:[15]

> "He has had a prior claim of 0.84%BHL with date of injury of 31/3/1994. Therefore the loss due to this claim with date of injury of 14.10.2009 is 13%WPI, after rounding."

58. When he was considering other medical opinions at 10c. the AMS said[16]:

> "…..Dr Fernandes made a 1/10th deduction for extrajurisdictional noise exposure in England prior to migration to Australia. He also made a deduction for a prior claim of 0.84%. Accordingly, Dr Fernandes made a double deduction (that is, both a 1/10th deduction for occupational noise exposure in England, and for industrial hearing loss claim of 0.84% binaural hearing loss in 1994). His prior claim in 1994 includes any industrial deafness suffered in England."

59. At paragraph 11 of his MAC, the AMS said:

> "I note the WCC referral states 'Previous Awards or Settlements:
> DOI: 31/03/1994
> Section 66: Approx. 0.84% BHL'
>
> If Mr Haggath's previous claim is 0.84% binaural hearing loss, his further loss is determined using the SIRA NSW workers compensation guidelines for the evaluation of permanent impairment, 4th edition, 1st April 2016 Chapter 9, para 9.15, p45.
>
> i The current total binaural hearing impairment is 25.7% which translates to 13% Whole Person Impairment using Table 9.1
>
> ii The total previous binaural hearing loss of 0.84% is 3.1% of the current hearing impairment.
>
> Iii The remaining 96.9% of the current hearing impairment is his further loss, and is 12.6%WPI, which rounds to 13%WPI.
>
> I note paragraph 1.26 re rounding states 'The method of calculating levels of binaural hearing loss is shown in Chapter 9, paragraph 9.15 in the Guidelines' which I have followed.
>
> Therefore, his further loss is 13%WPI."

Submissions

Appellant employer

60. It was alleged that the AMS had failed to account for the exposure by Mr Haggath to industrial noise between 1960 and 1981, when in England. An inference was available, it was contended, from the histories given to Dr Fagan and Dr Fernandes that Mr Haggath was there exposed to noisy employment.

61. We were referred to Chapter 9.15 of the Guides, which provide that:

> "9.15 The method of subtracting a previous impairment for noise-induced hearing loss, where the previous impairment was not assessed in accordance with the Guidelines, is as shown in the following example:

[15] Appeal papers page 44.
[16] Appeal papers page 44.

•• The current level of binaural hearing impairment is established by the relevant specialist.

•• Convert this to WPI using Table 9.1 in the Guidelines.

•• Calculate the proportion of the current binaural hearing impairment that was accounted for by the earlier assessment and express it as a percentage of the current hearing impairment.

•• The percentage of current hearing impairment that remains is the amount to be compensated.

•• This needs to be expressed in terms of WPI for calculation of compensation entitlement."

62. It was alleged that this guideline obliged the AMS to take into account the previous settlement and assess it separately regarding a s 323 deduction.

63. The appellant employer referred to the fact that there was no documentary evidence of the prior settlement and it could not therefore be determined whether it included a deduction under s 323 or not. Further, the AMS's finding that Mr Haggath's prior claim in 1994 included any industrial deafness suffered in England, was said to be unsubstantiated.

64. It was submitted that the exposure to noise in the UK by Mr Haggath was misdescribed by the AMS, and that the AMS was also incorrect in concluding that the previous settlement included the UK noise exposure.

Respondent worker

65. Mr Haggath submitted that the appellant employer's submissions did not advance its case in any meaningful way. Paragraph 9.15 of the Guides had been properly followed by the AMS.

66. We were referred to *Pereira v Siemans Ltd*[17] which had similar facts to the present case, in that the injured worker had earlier been an employee in Pakistan for 17 years. The AMS in that case made an assumption that the injured worker would have been exposed to noise, and Garling J set out in paragraphs 81 - 94 the evidentiary requirements for s 323 deduction to be made in those circumstances.

67. It was submitted that in the present case the appellant employer's submission was based upon speculation and hypothesis, as there was no factual evidence of any pre-existing injury regarding Mr Haggath's work in the UK.

Discussion

68. The appellant employer did not submit that the calculations of the AMS pursuant to Chapter 9.15 of the Guides (at paragraph 11 of the MAC) were erroneous, but rather that the AMS was also required to make a deduction pursuant to s 323 of the 1998 Act. Section 323 provides relevantly:

> "(1) In assessing the degree of permanent impairment resulting from an injury, there is to be a deduction for any proportion of the impairment that is due to any previous injury (whether or not it is an injury for which compensation has been paid or is payable under Division 4 of Part 3 of the 1987 Act) or that is due to any pre-existing condition or abnormality.

[17] [2015] NSWSC 1133 (*Pereira*).

(2) If the extent of a deduction under this section (or a part of it) will be difficult or costly to determine (because, for example, of the absence of medical evidence), it is to be assumed (for the purpose of avoiding disputation) that the deduction (or the relevant part of it) is 10% of the impairment, unless this assumption is at odds with the available evidence."

69. In *Periera,* at [81] Garling J referred to established authority that an assessment under this section was required to be one of fact, and not assumption or hypothesis. A s 323 deduction had been made by the AMS which had been upheld by the Appeal Panel, that was based on an equation concerning the amount of his working life that the worker had been working in Pakistan (17 years) and in Australia (32 years) which resulted in a deduction of 34%.

70. Garling J then at [86] referred to authority which established that any pre-existing condition or abnormality was required to be a diagnosable or established clinical entity. The mere existence of a pre-existing injury did not mean that it had contributed to the current WPI, Garling J said, but an enquiry was necessary as to whether the assessed WPI had been affected by other causes.

71. His Honour earlier in his reasons had traced the development of the law regarding claims for industrial deafness. He said at [91] that the condition was a sensorineural loss of hearing typically causing "an increased hearing loss from low to high tones with relative sparing of the low tones in comparison to high tones". The condition was attributed to exposure to noise above an identified level and over an extended period. His Honour said at [92]:

> "Thus, it is said that the deafness results from, or is caused by, a gradual process. It is not a pre-existing condition or abnormality as those terms are used."

72. Applying those principles to the case before him, Garling J noted at [98] that no pre-existing injury had been identified. There was no record of any relevant symptoms in the worker's Pakistani employment, and the best that could be said for the evidence before the AMS was that an assumption had been made that because the worker was exposed to noise, he must have suffered a pre-existing injury during that period of exposure.

73. Garling J said there was no evidence that would enable such a conclusion to be drawn. Whilst the evidence established that the worker worked in Pakistan, there was no evidence about the level or duration of exposure to noise which could have founded a conclusion that the exposure would have by a gradual process resulted in a loss of hearing.

74. His Honour also found that even if there were a pre-existing injury, the AMS had failed to consider whether it had contributed to the current assessed WPI. As it could not be assumed that such a contribution had been made, an enquiry was necessary to ascertain whether a difference in the assessed WPI had in fact been caused by it. Logically speaking, his Honour said, the entirety of the hearing loss may well have been caused only by the worker's exposure over the 32 years he had been working in Australia.

75. The conclusions by the AMS had been nothing more than assumption or speculation, His Honour found.

76. Similarly, in the present case, the appellant employer has no evidence to support its contention beyond the fact that between 1960 and 1981 Mr Haggath was employed as a car mechanic for 16 years, and in steelworks for about three years. The report on which the employer relied from Dr Fernandes also relied on hypothesis and speculation. In setting out Mr Haggath's employment in England Dr Fernandes deducted 1/10 pursuant to s 323 (2), saying:[18]

[18] Appeal papers page 89.

> "This constitutes extra jurisdictional noise exposure. The extent of the deduction attributable to this extra jurisdictional noise exposure is difficult to determine in the absence of the requisite post such exposure audiograms…"

77. The specialist members of the Panel would observe that noise exposure of itself does not cause occupational hearing loss. It requires, as stated by Garling J, evidence of the nature of the noise exposure and its duration. Dr Fernandes has, with respect, based the 1/10 deduction he applied on an assumption for which there was no evidentiary basis.

78. Although the appellant employer submitted that the prior assessment of hearing loss in 1994 would not have taken account of any pre-existing loss caused by Mr Haggath's work in England, it had no evidence to support that contention. It may be that a deduction was made at that time in any event. It is a submission which must also be rejected.

79. For these reasons, the Appeal Panel has determined that the MAC issued on 27 October 2020 should be confirmed.

I CERTIFY THAT THIS IS A TRUE AND ACCURATE RECORD OF THE REASONS FOR DECISION OF THE APPEAL PANEL CONSTITUTED PURSUANT TO SECTION 328 OF THE *WORKPLACE INJURY MANAGEMENT AND WORKERS COMPENSATION ACT 1998*.

G Bhasin

Gurmeet Bhasin
Dispute Support Officer
As delegate of the Registrar