

WORKERS COMPENSATION COMMISSION

CERTIFICATE OF DETERMINATION

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

Matter Number: 1795/20
Applicant: TANIA BLACKIE
Respondent: JDP SALES AND HIRE PTY LTD
Date of Determination: 28 MAY 2020
Citation: [2020] NSWCC 176

The Commission determines:

1. Respondent to pay the applicant's section 60 expenses in respect of treatment proposed by Dr Stuart Kennedy, namely, an open reduction internal fixation of left clavicle fracture and bone graft and associated expenses as a result of the injury on 24 March 2017.

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

Carolyn Rimmer
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 CAROLYN RIMMER, ARBITRATOR, WORKERS COMPENSATION COMMISSION.

S Naiker

Sarojini Naiker
Senior Dispute Services Officer
As delegate of the Registrar



STATEMENT OF REASONS

BACKGROUND

1. The applicant, Tania Blackie (Ms Blackie), was employed by the respondent, JDP Sales and Hire Pty Ltd (the respondent) as a truck driver. The respondent's workers compensation insurer at the relevant time was Employers Mutual Limited (the insurer).
2. In the course of her employment on 24 March 2017, Ms Blackie, while assisting in the loading of a truck, was hit by an unsecured load which caused her to fall off the back of the truck onto the ground. She sustained injuries to her right hip, low back, left elbow, cervical spine and both shoulders. Ms Blackie alleged that on about 7 December 2018 she suffered a fall onto her left shoulder because of a sharp pain in her right hip. The respondent disputes that Ms Blackie's right hip injury caused or materially contributed to this fall.
3. Ms Blackie made a claim for medical treatment in relation to an open reduction internal fixation (ORIF) of left clavicle fracture and bone graft and associated expenses proposed by Dr Stuart Kennedy.
4. The respondent disputed liability for the injury to the left shoulder (clavicle) in a section 78 notice dated 3 June 2019.

ISSUES FOR DETERMINATION

5. The parties agreed that the following issues remained in dispute:
 - (a) Whether Ms Blackie suffered a consequential condition to her left shoulder (fracture of the clavicle) as a result of the injury to her right hip on 24 March 2017.
 - (b) Whether the surgery proposed by Dr Kennedy was reasonably necessary as a result of the injury on 24 March 2017.

PROCEDURE BEFORE THE COMMISSION

6. The parties attended a conciliation conference and arbitration on 20 May 2020. Ms Blackie was represented by Mr Jak Calloway, who was instructed by Mr McQuilkin of Schofield King Lawyers. The respondent was represented by Mr Campbell Robertson who was instructed by Mr Lee of Lee Legal Group. Ms J Doyle from the insurer also attended the arbitration.
7. I am satisfied that the parties to the dispute understood the nature of the application and the legal implications of any assertions 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

8. The following documents were in evidence before the Commission and taken into account in making this determination:
 - (a) Application to Resolve a Dispute and attached documents; and
 - (b) Reply and attached documents.

Submissions

9. The submissions of the parties are recorded. I note that Mr Robertson submitted that there were numerous inconsistencies in the histories taken by various doctors concerning the mechanism of the fall on 7 December 2018 and if I found that Ms Blackie tripped over a cord or stood on the cord and lost her balance, I could not find that the fracture of the left clavicle was a consequential condition. However, Mr Robertson stated that if I was satisfied that pain in the hip led Ms Blackie to stand on the cord and fall or her right hip gave way and she fell, the fracture of the left clavicle would be a consequential condition. Mr Robertson referred to the decision of *Luxton v Vines* (1952) HCA 19;(1952) 85 CLR 352.
10. Mr Callaway submitted that if Ms Blackie's evidence was accepted, I would conclude that she had fallen because of the right hip injury and that this was not a case where inferences needed to be drawn. He argued that there was contemporaneous evidence which corroborated the nature of Ms Blackie's fall.

FINDINGS AND REASONS

Evidence of Ms Blackie

11. In a statement dated 9 December 2019, Ms Blackie said that on 7 December 2018 she was at her home in Crescent Head cleaning her desk when she went to move her printer in order to clean below it. She stated:

"I had unplugged the printer prior to moving it. I bent forward over the desk and lifted up the printer. Then turned to the right in order to place it on a nearby chair. As I did so I stepped out with my right leg in an abducting fashion and felt sharp pain in my right hip groin region. This caused me to reflexively step my leg back in. Unfortunately, in doing so I stood on the printer power cable with my right foot, this cause the power cable to become taut with the printer I was holding and because my feet were in a narrow stance I lost balance, falling to the left on to the top of my left shoulder."
12. Ms Blackie stated that she went to Kempsey District Hospital and was examined in the Emergency Department. She stated that an x-ray was carried out at the time and it established that she had sustained a left clavicle fracture. She said she was referred to the fracture clinic.
13. Ms Blackie stated that unfortunately all the histories taken by the various doctors and the hospital that she had seen were slightly different. She wrote:

"This is not because my version of what happened has changed it is just I think people don't listen to me when I am telling them. What occurred is what I have stated above. Had I not had pain in my hip I would not have stepped on the cord causing me to fall."
14. Ms Blackie said that the left clavicle fracture was causing her great distress and pain. She stated that she had been placed on a public waiting list to have the surgery but the wait list was long and she was uncertain as to when the surgery would occur.
15. Ms Blackie said that she required surgery to her right hip in order to correct the labral tear but her surgeon, Dr Michael O'Sullivan, had refused to perform that surgery until the left clavicle had been repaired because she would be required to use crutches for some time after the hip surgery.
16. Ms Blackie stated that she often had episodes of pain in the right hip/groin region when she stepped, particularly when she abducted her right leg.

Medical Reports

Medico-Legal Reports

17. In a report dated 10 May 2019, Dr Murray Hyde Page, consultant orthopaedic surgeon, noted that he examined Ms Blackie on 7 May 2019. He reported that Ms Blackie stated she suffered an injury at home on 7 December 2018. He wrote:

“She was standing at her computer desk and lifted the printer, took a step to the right and was about to place the printer on a chair. She states that she developed sharp pain in her right groin and fell forward to the floor landing on her left shoulder and the printer she dropped on the floor as well. Part of the reason she fell was that her foot caught in the printer cable as well.”

18. Dr Hyde Page noted that Dr Stuart Kennedy, orthopaedic surgeon, saw Ms Blackie initially on 19 February 2019. He noted that Dr Kennedy stated:

“Apparently Tania tripped over and fell over a printer cable at home sustaining a left clavicle fracture.”

19. Dr Hyde Page reported that Dr Kennedy organised for Ms Blackie to have an MRI scan of the left shoulder and repeat x-ray and on review diagnosed a non-union of the fracture of the left middle third of the clavicle. He noted that Dr Kennedy recommended that Ms Blackie have an ORIF of the fractured clavicle with some bone grafting.
20. Dr Hyde Page noted Ms Blackie had been seen by Dr Wellings in November 2018 regarding her right groin pain. He noted she had an MRI scan that showed some chondral thinning in both hips and some changes in the right labrum and Dr Wellings had organised a CT guided cortisone injection to the right hip. Dr Hyde Page reported that Dr Wellings reviewed her again in February 2019 and noted that she had ongoing right groin pain despite the injection but at that stage her most significant problem was the fractured clavicle. He noted that Dr Wellings had decided to organise a referral to a hip surgeon in Sydney, Dr Michael O’Sullivan, for ongoing management of her right hip pain.
21. On examination, Dr Hyde Page noted that there was some discomfort with movement in the right hip and some reduced abduction and rotation of the hip. He noted the left hip was normal and she had normal strength around her right hip and the circumference of the right thigh was equal to the left.
22. Dr Hyde Page noted that the MRI scan of the right hip in March 2017 showed some early degenerative changes and a partial tear of the labrum. He reported that a further MRI scan in 2019 showed a small anterior labral tear and a very small sublabral cyst, and overall the articular surfaces of the hip joint were normal with minimal evidence of osteoarthritis.
23. Dr Hyde Page was not satisfied that there was “a significant diagnosis of Ms Blackie’s right hip condition”. He considered that the MRI scan and x-rays did not suggest a significant underlying condition that would cause the severity of her present symptoms, and there was no evidence of significant osteoarthritis or chondral damage in the hip. He did not consider that the labral changes seen on the MRI scan were significant and there had been no significant change in the labral tear between the MRI scan of 2017 and 2019. He wrote: “This type of labral tear is unlikely to cause her present symptoms, or cause the fall.”
24. In answer to the question “*Do you consider that her right hip condition has contributed to her fall resulting in the fracture of the left clavicle?*”, Dr Hyde Page wrote:

“She fell at home when she lifted the printer of her computer desk and took a step to the right and was about to put the printer on a chair. I do not accept her explanation that she developed sharp right groin pain at that very moment that caused her to trip over the printer cord and fall heavily on her left shoulder, suffering a fractured clavicle.

I questioned her about Dr Kennedy's letter of 19 February 2019 where he states "apparently Tania tripped and fell over a printer cable at home sustaining a left clavicle fracture." She did not deny that this interpretation of the fall was not true."

25. Dr Hyde Page stated that overall he was not satisfied that it was catching pain in her right hip and groin that caused her fall, rather than the fact that she tripped over the printer cord resulting in the fractured left clavicle. He concluded that this was a simple trip and fall while lifting the printer, unrelated to her hip condition.
26. In a report dated 30 September 2019, Dr James Bodel, consultant orthopaedic surgeon, noted that Ms Blackie had been involved in an accident on 24 March 2017 when a load of scaffolding material was being loaded onto her truck. He noted that she was hit by the material and fell off the truck landing heavily on her right hand side. Dr Bodel reported that her injuries included a labral tear of the right hip, a rotator cuff tear and rupture of the long head of the biceps in the right shoulder, left lateral epicondylitis and damage to the ulnar nerve in the left elbow, disc bulge at L5/S1 level and an injury to the cervical spine. He noted that she underwent an ulnar nerve transposition in July 2017. He noted that in August 2018 Ms Blackie underwent an anterior cervical decompression and fusion at C5/6 and C6/7.
27. Dr Bodel reported that Ms Blackie subsequently moved to Taree and came under the care of Dr Stuart Kennedy. He noted she has been seen by Dr Wellings, orthopaedic surgeon, in Port Macquarie about her hip pain, and he recommended that she see Dr Michael O'Sullivan, orthopaedic surgeon, in Sydney.
28. Dr Bodel wrote (page 4):

"Unfortunately, she had a further episode of injury which occurred at home. She was carrying a printer on 07 December 2018 when she inadvertently stood on a printer cable. In doing so she felt a sharp stabbing pain in the groin on the right hand side as part of her continuing right hip pain and she stumbled and fell. She landed on her left side. As a result, she suffered a fracture of the clavicle."
29. Under "Subsequent accidents or injuries" (page 4) Dr Bodel noted that "she had the fall when her right hip gave way at her home on 07 December 2018".
30. Dr Bodel wrote (page 6):

"She has also been assessed by Dr Murray Hyde Page on 10 May 2019. He records the history as her tripping over the printer cable and falling, fracturing the clavicle on the left hand side and as a result he does not causally link this to her previous injury. The history given to me was that she stood on the cable and her right hip demonstrated a very sharp, severe pain which caused her leg to collapse and then she fell. I am dependent on the history to make the causal link to the original injury."
31. Dr Bodel stated that Ms Blackie suffered a closed head injury, an injury to the neck and right shoulder, injury to the lower back, injury to the right hip and injury to the left elbow in the fall on 24 March 2017. He wrote:

"She has had a consequential condition, based on the history that she gives, to the region of the left shoulder with a fracture of the clavicle on 07 December 2018 ... The diagnosis for the injury on 07 December 2018 is a displaced and now ununited fractured of the right clavicle."

32. Dr Bodel wrote:

“As I have indicated above, the issue of causation is dependent upon the history given.

Dr Murray Hyde Page has recorded that he was told or that in fact Dr Kennedy had recorded that this lady “tripped on a computer cable and fell fracturing her left clavicle”.

The history that I have been given was that she stood on the computer cable, developed a sharp stabbing pain in the region of her right hip which caused her leg to give way and she fell onto the point of her left shoulder while holding onto the printer that she was carrying.

I am dependent on the history as given and with that second description I am satisfied there is a causal link back to the original injury that occurred on 24 March 2017.”

33. Dr Bodel was asked the following question:

“If our client is accepted as to experiencing a sudden onset of sharp pain whilst stepping resulting in her stepping back suddenly and tripping over the printer cord, in your opinion, is the fractured left clavicle causally related to the right hip injury that occurred on 24 March 2017?”

Dr Bodel answered:

“I accept that the history that she gives is a plausible explanation for the event injuring the left shoulder.”

34. Dr Bodel noted that surgery should be performed as soon as possible to correct the circumstances on the left hand side and address the issues in the right [sic] shoulder.

Reports of Treating Doctors

35. In the Discharge Summary in the clinical notes from Kempsey District Hospital dated 6 December 2018, a diagnosis of a closed fracture of the clavicle was made. Under “Clinical Synopsis” it was noted that Ms Blackie had “*tripped over cord of printer – landed onto LEFT shoulder*”. It was noted that Ms Blackie had right hip osteoarthritis and had seen Dr Wellings and had a recent steroid injection.

36. In a referral to Dr Stuart Kennedy dated 11 February 2019, Dr Peter Ackerley, general practitioner, noted that Ms Blackie had a fall in early December injuring her left clavicle. Dr Ackerley wrote:

“Apparently this was because she tripped over a printer cable at home due to her painful right hip.”

37. In his clinical notes dated 18 February 2019, Dr Stuart Kennedy, treating orthopaedic specialist, noted the following history:

“Presents for R/V of Lt fractured clavicle. Rt hip gave way & Tania then tripped and fell directly onto Lt shoulder.”

38. In a report dated 19 February 2019, Dr Kennedy noted that Ms Blackie had tripped and fallen over a printer cable at home and sustained a left clavicle fracture. He reported that she had been treated through the Port Macquarie Base Hospital fracture clinic non-operatively. He noted that despite conservative management she was still having a lot of pain in the clavicle and noted that pain radiated into the shoulder down her arm and through the forearm into her hand. Dr Kennedy wrote: "This is a separate and new injury to her left shoulder."
39. Dr Kennedy made a diagnosis of delayed union of the left clavicle fracture. He referred Ms Blackie for repeat x-rays and an MRI of the left shoulder. Dr Kennedy wrote:
- "It's my understanding that her left shoulder injury has been accepted through a workers compensation claim."
40. In a report dated 15 March 2019, Dr Kennedy noted he had reviewed Ms Blackie for the left clavicle fracture and formed the impression that there was a delayed or non-union of the left mid third clavicle fracture and a partial rotator cuff tear. Dr Kennedy wrote:
- "Because Tania's clavicle fracture is not uniting I have recommended open reduction and internal fixation with local bone grafting. This type of fracture has a high risk of non-union because of the shortening and the vertebral segmental fragment."
41. Dr Kennedy recommended fixing the clavicle fracture only. Dr Kennedy wrote:
- "I believe the patient's left clavicle fracture is related to her right hip injury for the following reason. Tania has a labral tear in her right hip which is a workers compensation claim she tripped over a chord [sic] and couldn't support herself because her right hip gave way and this caused a heavy fall onto her left clavicle. Her right hip condition is indirectly responsible for her fall and clavicle fracture."
42. Dr Kennedy stated that he would seek approval for ORIF with bone grafting of the left clavicle fracture.
43. Dr Kennedy, in a report dated 13 December 2019, noted that he had reviewed Ms Blackie on 30 October 2018 for her right shoulder condition.
44. In answer to the question "Opinion as to causal connection between the incident on 7/12/18 and the injury sustained on 24/3/17", Dr Kennedy wrote:
- "It is my understanding that Tania injured her right shoulder on 24 March 2017 when she fell off a truck approximately 2.5m injuring her right shoulder. She then had a separate accident on 7 December 2018 when she tripped at home and sustained a cleft clavicle fracture. I am unaware of any connection between the two accidents. It is my understanding that they are not related."
45. In answer to the question "In this regard is it medically plausible that the injury to the right hip in the accident on 24 March 2017 led to a sudden incident of sharp pain?" Dr Kennedy replied:
- "I cannot comment on her right hip condition as I have not medically evaluated or treated it."
46. Dr Kennedy stated that his fee for surgically treating her clavicle fracture was \$1,896 for the treatment of a simple clavicle fracture and if it required more extensive surgery such as bone grafting the cost could be in excess of \$2,500. He said he could not comment on the anaesthetic or theatre costs.

47. In a report dated 15 November 2018, Dr Edward Wellings, treating orthopaedic surgeon, noted that Ms Blackie presented regarding her right hip, anterior groin and thigh pain. He noted that the MRI scan demonstrated chondral thinning in both hips with some labral separation noted as per the report. He believed the best management option would be corticosteroid and local anaesthetic injection under CT guidance into the hip.
48. In a report dated 4 February 2019, Dr Edward Wellings noted that Ms Blackie had an injection under image guidance and this was helpful for several days. He wrote:
- “Unfortunately Tania’s pain persists and she actually said she had a fall resulting in clavicle fracture since I last caught up with her.”
49. Dr Wellings recommended fresh weightbearing x-rays of the hips be obtained. He noted that Ms Blackie was really at the point where she would like definitive surgical management.
50. In a report to Dr Michael O’Sullivan dated 21 February 2019, Dr Edward Wellings, treating orthopaedic surgeon, noted that Ms Blackie initially presented on 15 November 2018 with right anterior hip, groin and thigh pain. He noted that she had recently sustained a clavicle fracture and was to undergo open reduction and internal fixation with Dr Kennedy. Dr Wellings stated that he examined Ms Blackie and she was mobilising into the office freely but had pain on internal rotation of 5 degrees on the right side and some pain on internal rotation of the left at approximately 10 degrees. He noted that pain caused her to wince as he adducted the leg across the body. Dr Wellings reported that he had arranged x-rays and CT guided corticosteroid injection into the right hip joint.
51. Dr Wellings wrote:
- “I certainly cannot find any severe chondromalacia warranting total joint replacement at this stage, however there has been some recorded mild labral pathology and I would value your opinion and judgment as to whether Tania should proceed with surgical intervention in the form of hip arthroscopy or whether you feel total joint replacement may be a better option, given she has had failed non-operative treatment.”
52. In a report dated 18 February 2020, Dr Michael O’Sullivan noted that subsequent to the original injury on 23 March 2017 Ms Blackie had an episode where her right hip gave way from underneath her and she subsequently fell and fractured her left clavicle. He noted that she continued to have symptoms referable to her right hip but her major problem was the unresolved shoulder issues.
53. Dr O’Sullivan made a diagnosis of a right hip acetabular labral tear. He considered that the prognosis for this was good as long as she gets appropriate treatment and with arthroscopic hip surgery she had a 90% chance of her symptoms being resolved. Dr O’Sullivan wrote:
- “It is medically plausible that the injury to her right hip could lead to a sudden sharp catching sensation in her hip which resulted in her tripping over and injuring her shoulder. Sharp stabbing pain or sharp catching pain in the hip joint is certainly a feature of acetabular labral tears.”
54. The clinical notes and records from AB Surgery contained the following entries:
- (a) In an entry dated Monday, 11 February 2019, Dr Ackerley noted that Ms Blackie was seeing Dr Wellings for her hip and Dr Kennedy for left clavicle as well as left shoulder. He wrote:

“Tripped over printer cord 7/12/18 injuring left clavicle which is still painful ... considers that the fall was because of her right hi[p] which is the subject of work cover claim and thus should be covered by workers compensation.”

- (b) In an entry dated Thursday, 24 January 2019, Dr McDonald noted that Ms Blackie had injured her left shoulder/collarbone on 6 December 2018. Dr McDonald noted:

“Was carrying a printer and experienced sharp pain in her right hip secondary to ongoing work-related injury.

This caused Tania to stumble and stood on the printer cord.

Fell and landed heavily on the left shoulder. ...

Presented to Kempsey District Hospital emergency department same day. X-ray confirmed left distal third clavicular fracture with ← 1cm of shortening, minimal comminution.”

- (c) In an entry dated Monday, 21 January 2019 Dr McDonald wrote:

“Notes entered in retrospect as medical director not working at time of appointment. Presents for skin check.”

There was no reference in those notes to the fracture of the left clavicle.

- (d) In an entry dated Monday, 7 January 2019, Dr McDonald noted that since the last review Ms Blackie had fractured her left clavicle. Dr McDonald noted:

“Has been following up with the PMBH fracture clinic – may require surgery – still getting a lot of pain.”

- (e) In an entry dated Monday 17 September 2018 Dr McDonald noted:

“Also would like to see Dr Wellings for hip pain – has made an appointment to see him, will need to get an MRI.”

Dr McDonald referred Ms Blackie for diagnostic imaging of the right hip.

- (f) In an entry dated Monday 20 August 2018 Dr McDonald noted that Ms Blackie was worried about the right labral tear and she could not abduct the right hip:

“Painful to get up out of a chair, catches in her groin – also painful to lie on right side – has been present since the accident, but getting worse. It feels like it is affecting her gait.”

On examination Dr McDonald noted Ms Blackie was tender to palpation over the anterior right hip joint, abduction was very painful.

Discussion

55. At the commencement of the arbitration, counsel for the respondent stated that the respondent accepted that Ms Blackie had injured her right hip in the accident on 24 March 2017. Further, there was no dispute that Ms Blackie had fallen in her home on 6 December 2018. The respondent conceded that there was no evidence to the contrary that the surgery proposed by Dr Kennedy in his report dated 12 March 2019 was reasonably necessary.

Mr Robertson confirmed that the issue was whether the left clavicle fracture was consequential upon the accepted right hip injury.

56. In *Kooragang Cement Pty Ltd v Bates* (1994) 35 NSWLR 452 (*Kooragang*), Kirby P stated [at 462E]:

“Since that time, it has been well recognised in this jurisdiction that an injury can set in train a series of events. If the chain is unbroken and provides the relevant causative explanation of the incapacity or death from which the claim comes, it will be open to the Compensation Court to award compensation under the Act.”

57. Further, his Honour stated [at 463–464]:

“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 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 common sense 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. In each case, the question whether the incapacity or death ‘results from’ the impugned work injury (or in the event of a disease, the relevant aggravation of the disease), is a question of fact to be determined on the basis of the evidence, including, where applicable, expert opinions. Applying the second principle which Hart and Honoré identify, a point will sometimes be reached where the link in the chain of causation becomes so attenuated that, for legal purposes, it will be held that the causative connection has been snapped. This may be explained in terms of the happening of a novus actus. Or it may be explained in terms of want of sufficient connection. But in each case, the judge deciding the matter, will do well to return, as McHugh JA advised, to the statutory formula and to ask the question whether the disputed incapacity or death ‘resulted from’ the work injury which is impugned.”

58. The High Court in *Comcare v Martin* (2005) HCA 26 (*Martin*) considered the extent to which one can rely on a “common sense approach”.

59. In *Martin* the High Court stated at [42]:

“Causation in a legal context is always purposive. The application of a causal term in a statutory provision is always to be determined by reference to the statutory text construed and applied in its statutory context in a manner which best effects its statutory purpose. It has been said more than once in this Court that it is doubtful whether there is any ‘common sense’ approach to causation which can provide a useful, still less universal, legal norm.” (Footnotes omitted)

60. In *Martin* the High Court referenced its decision in *Allianz Australia Insurance Ltd v GSF Australia Pty Ltd*³, wherein it was stated:

“[96] Santow JA also emphasised that this question of causality was not at large or to be answered by ‘common sense’ alone; rather, the starting point is to identify the purpose to which the question is directed. Those propositions should be accepted. The following may be added.

[97] First, in *March v Stramare (E&MH) Pty Ltd*, McHugh J doubted whether there is any consistent 'commonsense notion of what constitutes a 'cause', and added:

'Indeed, I suspect that what common sense would not see as a cause in a non-litigious context will frequently be seen as a cause, according to common sense notions, in a litigious context. This is particularly so in many cases where expert evidence is called to explain a connexion between an act or omission and the occurrence of damage. In these cases, the educative effect of the expert evidence makes an appeal to common sense notions of causation largely meaningless or produces findings concerning causation which would often not be made by an ordinary person uninstructed by the expert evidence.'

61. However, as I understand it, Kirby P in *Kooragang* when referring to applying "common sense" was not suggesting it be applied "at large" or that issues were to be determined or answered by "common sense" alone, but by a careful analysis of the evidence.
62. The respondent submitted that the applicant had the onus of proving the consequential condition, the fracture of the left clavicle, and that I could not be satisfied on the evidence that the applicant had experienced a sharp pain in her hip and groin region and fallen as a consequence of the injury to the right hip on 24 March 2017. The respondent relied on the opinion of Dr Hyde Page.
63. The applicant submitted that there was sufficient evidence for me to make a finding of a consequential condition in the left clavicle to the cervical spine and relied on the clinical notes of the general practitioners, Dr McDonald and Dr Ackerley, the history given to Dr Hyde Page as well as Ms Blackie's evidence.
64. There is no dispute that the applicant sustained an injury to her right hip on 24 March 2017. However, Dr Hyde Page considered that the type of labral tear Ms Blackie had was unlikely to cause her present symptoms or cause the fall in December 2018.
65. Dr Hyde Page reported that the MRI scan in 2019 showed a small anterior labral tear and a very small sublabral cyst, and overall the articular surfaces of the hip joint were normal with minimal evidence of osteoarthritis. On examination, Dr Hyde Page noted that there was some discomfort with movement in the right hip and some reduced abduction and rotation of the hip but Ms Blackie had normal strength around her right hip and the circumference of the right thigh was equal to the left.
66. Dr Hyde Page was not satisfied that there was "a significant diagnosis of Ms Blackie's right hip condition". He considered that the MRI scan and x-rays did not suggest a significant underlying condition that would cause the severity of her present symptoms, and there was no evidence of significant osteoarthritis or chondral damage in the hip. He did not consider that the labral changes seen on the MRI scan were significant and there had been no significant change in the labral tear between the MRI scan of 2017 and 2019.
67. Ms Blackie stated that she often had episodes of pain in the right hip/groin region when she stepped, particularly when she abducted her right leg. She stated that she required surgery to her right hip in order to correct the labral tear but her surgeon, Dr O'Sullivan, had refused to perform that surgery until the left clavicle had been repaired.
68. In the clinical notes dated Monday 20 August 2018, Dr McDonald noted that Ms Blackie was worried about the right labral tear and she could not abduct the right hip. In particular Dr McDonald noted that Ms Blackie found it "painful to get up out of a chair, catches in her groin – also painful to lie on right side – has been present since the accident, but getting worse. It feels like it is affecting her gait." On examination Dr McDonald noted Ms Blackie was tender to palpation over the anterior right hip joint and abduction was very painful.

69. In the clinical notes dated Monday 17 September 2018, Dr McDonald noted that Ms Blackie wanted to see Dr Wellings for “hip pain”. Dr McDonald referred Ms Blackie for diagnostic imaging of the right hip.
70. On 15 November 2018, Dr Wellings noted that Ms Blackie presented regarding her right hip, anterior groin and thigh pain. He noted that the MRI scan demonstrated chondral thinning in both hips with some labral separation noted as per the report and believed the best management option would be corticosteroid and local anaesthetic injection under CT guidance into the hip.
71. On 4 February 2019, Dr Wellings noted that Ms Blackie had an injection under image guidance at Port X-ray and this was helpful for several days. He noted that Ms Blackie’s pain persisted and she “was really at the point where she would like definitive surgical management”.
72. On 21 February 2019, Dr Wellings stated that he examined Ms Blackie and she was mobilising into the office freely but had pain on internal rotation of 5 degrees on the right side and some pain on internal rotation of the left at approximately 10 degrees. He noted that pain caused her to wince as he adducted the leg across the body. Dr Wellings reported that he could not find any severe chondromalacia warranting total joint replacement at this stage, but there has been some recorded mild labral pathology. He requested Dr O’Sullivan to provide an opinion as to whether Ms Blackie should proceed with surgical intervention in the form of hip arthroscopy or whether you feel total joint replacement may be a better option, given she had failed non-operative treatment.
73. Dr O’Sullivan made a diagnosis of a right hip acetabular labral tear. He considered that the prognosis for this was good as long Ms Blackie got appropriate treatment and with arthroscopic hip surgery she had a 90% chance of her symptoms being resolved.
74. It was significant, in my view, that in August 2018, about four months before the fall on 7 December 2018 Dr McDonald noted that Ms Blackie’s hip condition was getting worse and she found it painful to get up out of a chair and experienced “catches in her groin”. On examination Dr McDonald noted that abduction was very painful. Both Dr Wellings and Dr O’Sullivan concluded that Ms Blackie required surgery for the labral tear, although there was some question as to whether arthroscopic hip surgery or hip joint replacement was the best option. Dr Hyde Page was the only doctor who considered that the MRI scan and x-rays did not suggest a significant underlying condition that would cause the severity of her present symptoms.
75. I am satisfied on balance that the labral tear in Ms Blackie’s right hip caused her considerable pain including pain on abduction before the fall on 7 December 2018. The weight of the medical evidence and Ms Blackie’s evidence is that Ms Blackie had a painful right hip condition due to the injury at work on 24 March 2017 and this was getting worse. Ms Blackie had sought treatment from a specialist, Dr Wellings, for the right hip problems prior to the incident on 7 December 2018.
76. The next matter to be considered is the mechanism of the fall on 7 December 2018.
77. The respondent submitted that there were numerous inconsistencies in the histories provided concerning the mechanism of the fall.
78. Ms Blackie in her statement dated 7 December 2019 said that on 7 December 2018, she went to move her printer in order to clean below it. She stated:

“I had unplugged the printer prior to moving it. I bent forward over the desk and lifted up the printer. Then turned to the right in order to place it on a nearby chair. As I did so I stepped out with my right leg in an abducting fashion and felt sharp pain in my right hip groin region. This caused me to reflexively step my leg back in. Unfortunately, in doing so I stood on the printer power cable with my right foot, this cause the power cable to become taut with the printer I was holding and because my feet were in a narrow stance I lost balance, falling to the left on to the top of my left shoulder.”

79. I noted that this history was largely consistent with the history provided in a letter from Ms Blackie’s solicitors to Dr Kennedy dated 12 September 2019. In that letter, Mr McQuilkin noted that Ms Blackie stated that she was moving her printer when she stepped forward with her right leg, as she did so, she felt a sudden sharp pain emanating from her right hip groin region. He noted that the pain caused her to step back suddenly and she tripped and fell over the printer cord.
80. The Discharge Summary from Kempsey District Hospital dated 6 December 2018, recorded that Ms Blackie had “tripped over cord of printer – landed onto LEFT shoulder”.
81. On 7 January 2019, Dr McDonald, in the clinical records, noted that since the last review Ms Blackie had fractured her left clavicle. No description of how the fracture had occurred was noted.
82. On 21 January 2019, Dr McDonald, in the clinical records, noted that Ms Blackie presented for a skin check. There was no reference to the fracture of the left clavicle but apparently the notes were entered in retrospect as medical director was not working at time of appointment.
83. On 24 January 2019, Dr McDonald, in the clinical records, noted that Ms Blackie had injured her left shoulder/collarbone on 6 December 2018. Dr McDonald noted that Ms Blackie was carrying a printer and experienced sharp pain in her right hip secondary to ongoing work-related injury, which caused her to stumble and she stood on the printer cord and fell.
84. On 11 February 2019 Dr Ackerley, in a referral to Dr Kennedy, noted that Ms Blackie had a fall early December injuring her left clavicle. Dr Ackerley wrote: “Apparently this was because she tripped over a printer cable at home due to her painful right hip.”
85. In his clinical notes dated 18 February 2019, Dr Kennedy noted a history of the right hip giving way and Ms Blackie then tripping and falling onto her left shoulder. This was the first reference to the right hip giving way. However, in his report dated 19 February 2019, Dr Kennedy merely noted that Ms Blackie had tripped and fallen over a printer cable at home and sustained a left clavicle fracture. He wrote: “This is a separate and new injury to her left shoulder.” There was no reference to the painful right hip or the hip giving way.
86. On 15 March 2019 Dr Kennedy recommended open reduction and internal fixation of the left clavicle with local bone grafting. Dr Kennedy believed that Ms Blackie’s left clavicle fracture was related to her right hip injury, a labral tear, as she had tripped over a chord [sic] and could not support herself because her right hip gave way. He considered that her right hip condition was indirectly responsible for her fall and clavicle fracture.
87. In a later report dated 13 December 2019, Dr Kennedy noted that Ms Blackie had a separate accident on 7 December 2018 when she tripped at home and sustained a left clavicle fracture. He stated that he was unaware of any connection between the two accidents and understood that they were not related. Dr Kennedy declined to provide an opinion as to whether it was medically plausible that the injury to the right hip in the accident on 24 March 2017 led to a sudden incident of sharp pain as he had not evaluated or treated the hip condition.

88. On 18 February 2020, Dr O'Sullivan expressed the view that it was medically plausible that the injury to her right hip could lead to a sudden sharp catching sensation in her hip which resulted in her tripping over and injuring her shoulder. He noted that sharp stabbing pain or sharp catching pain in the hip joint was certainly a feature of acetabular labral tears.
89. Dr Hyde Page noted that he examined Ms Blackie on 7 May 2019 and took a history of Ms Blackie standing at her computer desk, lifting the printer, and taking a step to the right to place the printer on a chair. He noted that she stated that she developed sharp pain in her right groin and fell forward to the floor landing on her left shoulder and part of the reason she fell was that her foot caught in the printer cable.
90. Dr Bodel recorded a history of Ms Blackie carrying a printer at home when she inadvertently stood on a printer cable. He noted that in doing so she felt a sharp stabbing pain in the groin on the right hand side as part of her continuing right hip pain and she stumbled and fell.
91. Ms Blackie said in her statement that unfortunately all the histories taken by the various doctors and the hospital that she had seen were slightly different. She stated that this was not because her version of what happened has changed. She said that she thought that people did not listen to her when she was telling them. She stated that what occurred was what she stated and had she not had pain in her hip she would not have stepped on the cord causing her to fall.
92. Mr Callaway argued that Ms Blackie had provided a complete account of what had occurred in the incident on 7 December 2018. He submitted that most histories were consistent with parts of Ms Blackie's statement apart from the histories that recorded the leg giving way.
93. The notes from Kempsey District Hospital were extremely brief and recorded a trip over the printer cord. There was no reference to hip pain but this is not surprising as the focus of the staff at the hospital would have been on treatment of the fracture of the left clavicle. The description was not in itself inconsistent with the history in the applicant's statement but lacked considerable detail.
94. The next history was recorded by Dr McDonald on 24 January 2019. Dr McDonald noted that Ms Blackie was carrying a printer and experienced sharp pain in her right hip secondary to ongoing work-related injury, which caused her to stumble and she stood on the printer cord and fell. I accept this as a reasonably accurate record of the incident. This history was not inconsistent with the history recorded by Dr Ackerley on 11 February 2019 of a trip over a printer cable at home due to her painful right hip.
95. I accept that the various histories recorded by Dr Kennedy were quite inconsistent and it is difficult to place any weight upon those accounts. On 18 February 2019, Dr Kennedy noted a history of the right hip giving way and Ms Blackie then tripping and falling onto her left shoulder yet there was no reference to the hip giving way in his report dated 19 February 2019, merely a history of a trip and fall. On 15 March 2019, Dr Kennedy noted that Ms Blackie had tripped over a cord and she could not support herself because her right hip gave way. However, on 13 December 2019, Dr Kennedy stated that he was unaware of any connection between the two accidents and understood that they are not related. Dr Kennedy also ignored the history provided by Dr Ackerley in the referral dated 11 February 2019 of a trip over a printer cable at home due to a painful right hip.
96. Dr Hyde Page examined Ms Blackie on 7 May 2019 and took a history of Ms Blackie standing at her computer desk, lifting the printer, and taking a step to the right to place the printer on a chair. He noted that she stated that she developed sharp pain in her right groin and fell forward to the floor landing on her left shoulder and part of the reason she fell was that her foot caught in the printer cable. This history was consistent with that given in the applicant's statement.

97. However, Dr Bodel in the examination on 30 September 2019, recorded a different history of Ms Blackie inadvertently standing on a printer cable and feeling a sharp stabbing pain in the groin on the right hand side and stumbling and falling. Dr Bodel was asked to answer a question setting out a history of Ms Blackie “experiencing a sudden onset of sharp pain whilst stepping resulting in her stepping back suddenly and tripping over the printer cord” yet he failed to address the difference between the history he took and that given in the letters of instructions. This failure suggest that he did not, as Ms Blackie stated, pay full attention to her answers and listen to what Ms Blackie said.
98. On 18 February 2020, Dr O’Sullivan referred to an episode where Ms Blackie’s right hip gave way from underneath her and she subsequently fell and fractured her left clavicle.
99. As noted above, I was satisfied that Ms Blackie experienced worsening pain in her right hip particularly on abduction. After considering the evidence given by Ms Blackie, the history taken by Dr McDonald and by Dr Hyde Page, I am satisfied on balance that Ms Blackie experienced sharp pain in her right hip and groin area when she took a step to the right to place the printer on a chair and that this pain caused her to step back and stand on the printer cord and lose her balance. I accept the evidence given by Ms Blackie as to the how the fall occurred on 7 December 2018. I am not satisfied that this was, as Dr Hyde Page put it, “a simple trip and fall”.
100. Dr Hyde Page’s opinion depended in part on the fact that he disbelieved the history Ms Blackie gave him. He was the only doctor who did not accept the history she provided. I accept that one reason for him not accepting Ms Blackie’s account of what had occurred was related to the fact that he did not consider that she had a significant underlying condition that would cause the severity of her present symptoms. However, this opinion was not supported by the weight of the medical evidence and, in particular, the fact that two treating orthopaedic surgeons were discussing the surgical options for a repair of the labral tear in the right hip. There was sufficient evidence in the general practitioner’s clinical notes to corroborate Ms Blackie’s complaints of pain in the hip particularly when she abducted her right leg.
101. On balance, I am satisfied that the applicant has discharged the onus of proof and that Ms Blackie suffered a consequential condition to her left shoulder (fracture of the clavicle) as a result of the injury to her right hip on 24 March 2017.
102. The respondent made no submissions on the question of whether the surgery proposed by Dr Kennedy was reasonably necessary. The respondent properly conceded that there was no evidence to the contrary that the surgery proposed by Dr Kennedy in his report dated 12 March 2019 was reasonably necessary. In those circumstances, I find that it is reasonably necessary that the applicant undergo the surgery proposed by Dr Kennedy, namely, an open reduction internal fixation (ORIF) of left clavicle fracture and bone graft and associated expenses.