WORKERS COMPENSATION COMMISSION

CERTIFICATE OF DETERMINATION

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

Matter Number: **4153/19**
Applicant: **DONNA SIGANTO**
Respondent: **DPG SERVICES PTY LIMITED**
Date of Determination: **7 November 2019**
Citation: **[2019] NSWWCC 360**

The Commission determines:

1. The incapacity suffered by the applicant in the periods claimed results from the injury in the course of employment with the respondent on 4 July 2018.

2. As agreed at the arbitration hearing the parties are to attempt to reach agreement as to the entitlement for weekly compensation arising from the above finding. Leave to apply.

3. The proposed L5/S1 disc replacement surgery is reasonably necessary as a result of the applicant's work injury on 4 July 2018.

4. Respondent to pay the applicant's section 60 of the *Workers Compensation Act 1987* expenses on production of accounts/receipts, including the L5/S1 disc replacement surgery and associated costs.

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

Ross Bell
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 ROSS BELL, ARBITRATOR, WORKERS COMPENSATION COMMISSION.

A Reynolds

Antony Reynolds
Senior Dispute Services Officer
As delegate of the Registrar

STATEMENT OF REASONS

BACKGROUND

1. This Application to Resolve a Dispute (the Application) filed on 15 August 2019 is in respect of a claim for injury to the lumbar spine on 4 July 2018. The insurer denied the claim in a Notice issued under s 78 of the *Workplace Injury Management and Workers Compensation Act 1998* (The 1998 Act) dated 12 March 2019. The Application is for weekly compensation; and section 60 of the *Workers Compensation Act 1987* (the 1987 Act) medical expenses.

ISSUES FOR DETERMINATION

2. The following issues remain in dispute:

    (a) Is Ms Siganto's incapacity for work caused by the work injury on 4 July 2018?

    (b) If so, what is Ms Siganto's entitlement to weekly compensation due to that incapacity? and

    (c) Are Ms Siganto's s 60 medical expenses, including proposed L5/S1 disc replacement surgery, reasonably necessary as a result of the injury on 4 July 2018?

PROCEDURE BEFORE THE COMMISSION

3. The parties attended a conciliation conference and arbitration hearing on 15 October 2019. I am satisfied that the parties to the dispute understand the nature of the application and the legal implications of any assertion made in the information supplied. I have used my best endeavours in attempting to bring the parties to the dispute to a settlement acceptable to all of them. I am satisfied that the parties have had sufficient opportunity to explore settlement and that they have been unable to reach an agreed resolution of the dispute.

EVIDENCE

Oral evidence

4. There was no oral evidence adduced.

Documentary evidence

5. The following documents were in evidence before the Commission and I have taken them into account in making this determination:

    (a) The Application with annexed documents.

    (b) Reply with annexed documents.

    (c) Application to Admit Late Documents with annexures filed for the respondent on 11 October 2019 comprising clinical notes.

SUBMISSIONS

6. The representatives made oral submissions at the arbitration hearing. As they were recorded they will not be repeated here, but I have taken them into account, and they are referred to in the discussion below.

Is Ms Siganto's incapacity for work and need for medical treatment, including L5/S1 disc replacement, the result of the work injury on 4 July 2018?

7. Ms Siganto has been employed as Assistant In Nursing at Opal Aged Care at Tweed Heads since 8 July 2015, working 40 to 50 hours per week. On 4 July 2018 in the late morning she was in a lift at work with two others, descending from level 3 to the ground level. There was an apparent power issue, and the lift dropped in what felt to Ms Siganto like "freefall" and when the fall stopped she experienced extreme pain in the lower back. She left work in the early afternoon. The next day she was unable to get out of bed with her spine being sore, worse in the lower back. She attended Dr Burger, with whom she became dissatisfied, then saw Dr Ashton and Dr Lao at Tweed Heads Medical Centre. She was off work initially for one week and returned on light duties. She struggled with back pain and in February 2019 she was certified totally unfit for work. At the end of 2018 Dr McEntee recommended surgery. The symptoms continue.

Inconsistency in the histories

8. The respondent submits that there are discrepancies between the histories given by Ms Siganto in her statement and those taken by the medical practitioners. Ms Siganto says in her statement that it felt like "freefall" for approximately 5 seconds.

9. Dr Burger noted on 5 July 2018 that,

> "jolted in the lift and went into panic yesterday when the power went off at the Nursing Home. Now feels like pain all over her and spasms in her neck, had to take a codeine last night but didn't help."

10. Dr Ashton's note for 13 July 2018 records,

> "at work stepped Into lift with 2 other co-workers
> lift jolted and dropped a few feet In the lift
> pt became quite anxious/panicked
> power was turned off due to a power check at work
> she noted some soreness in her lower back at lunchtime that same day"

11. Dr Lau says in his note for 15 August 2015, "… got jolted in lift when power suddenly turned off r mid back pain tor posterior leg (pain & PINS AND NEEDLES) …"

12. Dr McEntee notes in his report to the insurer of 19 September 2018,

> "Ms Siganto was involved in a work accident on 4 July 2018 when a lift dropped a couple of meters and then stopped suddenly on her, Since that time, she has had low back pain and right sided sciatica."

13. Dr Hudson in his report of 18 June 2019 records,

> "Apparently, the power went off and the lift dropped from level 3 down to level 1 and then back up to level 4. She was standing in the middle of the lift and therefore was unable to support herself. She noted a burning sensation in the lower back, especially on the right side and she finished her shift with some discomfort."

14. Dr Coroneous reports the history in his report of 14 February 2019,

> "1. Ms Siganto advised that at approximately 11:20 am on 4 July 2018, she was in the elevator with two colleagues (a male EN and a female AIN), and they were travelling down to Level 1 for lunch and she told me that the power was interrupted to the lift and she was jolted as the lift dropped. She told me that the lift sign indicated Level 1 but then the lift went to Level 4.

2. Ms Siganto told me that she did not fall to the ground and neither did any of the other occupants.

3. She told me that she was "jolted" and experienced burning mid-back pain VAS (defined) "10/10"."

15. The respondent also raises the history given by Ms Siganto to Dr Coroneous as to previous back problems which was reported as,

> "I asked her if prior to the subject injury on 4 July 2018, if she had any prior neck, back or spine symptoms or complaints and she advised that she had not."

16. Ms Siganto told Dr Hudson about prior back issues, "Prior to the injury, she had occasional low back pain after a heavy day at work."

17. Dr Burger's notes for 29 April 2000 recorded, "ORUV AIL SR CAPSULE 200mg I daily cc for back pains"; and on 5 October 2013 he noted severe back pain and suggested an exercise program for the low back.

18. There is a discharge summary which includes record of pain at the lumbar spine, the report being by the Resident Medical Officer, including an x-ray of "Nov 2013", reported as showing reduced disc height at L5/S1, sclerosis and end plate spurring.

19. The clinical notes also record on 23 April 2015 a painful coccyx requiring investigation, with the results reported on 30 April apparently normal.

20. The pre-employment assessment report summary of 18 May 2015 records Ms Signato's responses to questions regarding her back,

> "In the average week how often would you feel even the slightest discomfort in your back?
> • Usually only once towards the end of a whole week"

21. The assessor commented on examination,

> "On examination, there was no pain on active movements of the lumbar spine. There was some stiffness with right lateral flexlon and extension. There was tightness of the straight leg raises on both sides. Ms Siganto was able to lift and do sustained positions with no pain."

22. Dr Burger records on 26 November 2016 an incident of pain at T12/L1 with Celebrex recommended.

Discussion

23. To the extent the respondent seeks to submit that Ms Siganto is an unreliable witness, I reject that submission. There is no substantial difference in the accounts of the movement of the lift in which the injury occurred. In particular, there is no contradiction between the accounts as to how many metres, feet or levels the lift traversed. The common thread is that there was a jolt, or sudden stop, at some point during the movement of the lift, and that is sufficient. The incident brought on severe symptoms which have continued, and which had not been experienced by Ms Siganto previously.

24. Dr McEntee was asked specifically about the mechanism of injury for his report of 11 January 2019,

> "There are differing accounts of the mechanism of injury from a witness who alleges the lift dropped several inches only. If this was the case, do you consider that this mechanism would have induced the current diagnosis/proposed surgery. Please explain."

25. In response, Dr McEntee said, "Even a drop of several inches with a sudden stop could cause significant axial force through the lumbar spine."

26. I find nothing contradictory or unreliable on Ms Siganto's part in the slightly different histories recorded. The lift may well have moved between floors during the incident, but this does not mean Ms Siganto gave different answers about the sudden "jolt" she experienced. The answers depended upon the nature of the questions asked of her. Dr McEntee's comment puts the matter to rest. I am satisfied that somewhere during a short period of random movement of the lift there was a "jolt" causing Ms Siganto's back pain.

27. I also reject the respondent's submission that Ms Siganto misrepresented her history of previous back pain. She was open about her occasional symptoms in her pre-employment assessment, yet was found by the assessor at that time to be capable of the heavy work to be undertaken.

28. Ms Siganto also told Dr Hudson she had occcasional bouts of low back pain after a heavy day's work.

29. The submission for the respondent that Dr Coroneous was misled by Ms Siganto on the history of back issues is not sustainable against this background. Ms Siganto had experienced nothing like the degree of constant pain from the time of the jolt in the lift, includingsciatic pain. She completed the "registration form" for Dr Coroneous before an examination in the context of constant pain. I do not accept that she was attempting to mislead Dr Coroneous. She had never experienced the range or level of symptoms suffered after the lift incident. An occasional sore back after a period of hard work is not in the same league. In any case, Dr Coroneous was of the view from the imaging that there was pre-existing degenerative change. I note that Dr Hudson was easily able to elicit from Ms Siganto the previous occasional bouts of back soreness after heavy work, as she herself reported in the pre-employment assessment.

30. For these reasons I find no issues of credit with Ms Siganto's statement or the histories taken by the practitioners.

31. Dr McEntee is of the view that the surgery is necessary because of the injury in the lift,

> "Ms Siganto almost certainly had pre-existing degeneration of the L5-S1 disc; however, this was essentially an asymptomatic condition for her prior to the work accident. In my opinion, the need for surgery arises as a direct result of the work accident."

32. This raises an issue with Dr Coroneous's opinion, because he does not address the dramatic onset of continuous severe symptoms from the time of the lift jolt to date, compared with the occasional back soreness beforehand. Dr McEntee's opinion is consistent with the actual course of events, whereas Dr Coroneous' view requires an elusive transfer of causation from the lift jolt to degenerative changes alone, which involves a leap of logic on the history in this matter.

33. Dr Hudson says in his report of 19 June 2019,

> "There is no doubt that Ms Siganto has a significantly degenerated lumbosacral disc. She has had an unusual mechanism of injury and it would fit into the direct trauma or extrinsic overload injury mechanism. This is an uncommon cause of low back pain in industry, but on the other hand the injury which she has sustained is an unusual one with a direct axial load with the lift failing.

> Prior to this injury, she had the odd episode of low back pain, particularly after a hard day at work, but the injury appears to have been associated with a significant aggravation of the symptoms. Her employment appears to have been the main contributing factor causing this aggravation."

34. This comment is entirely consistent with the past medical history, the mechanism of the incident and the course of the injury since, and I prefer Dr Hudson and Dr McEntee over Dr Coroneous.

The nature of the injury on 4 July 2018 and its results

35. Roche DP in *Murphy v Allity Management Services Pty Ltd* [2015] NSWWCCPD 49, noted the established authority[1] that there may be multiple causes of an injury, and also emphasised that the test with medical expenses is whether the injury was a material contribution to the need for the subject treatment.

36. The respondent submits that the effects of the lift incident should be seen as minor compared with the pre-existing degenerative condition. In my view the evidence does not lead to this conclusion. As discussed above, Dr Coroneous does not address the immediate onset of severe symptoms which have continued since the time of the incident. I accept Dr Hudson's view that it caused "… a significant aggravation of the symptoms."

37. I do not accept Dr Coroneous's opinion that the effects of the aggravation have ceased. On the contrary, the symptoms have continued from the time of the injury through to the present, and now surgery is indicated. Injury is not in dispute, but it is clear that the work incident in the lift resulted in the permanent aggravation of degenerative changes in the lumbar spine.

38. The applicant also cited the familiar case of *Kooragang Cement Pty Ltd v Bates* (1994) 35 NSWLR 452 in which the Court said,

> "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. … What is required is a commonsense evaluation of the causal chain." All the evidence must be considered."

39. The facts and medical history in this matter establish a clear causal chain from the time of the injury to the present. The history prior to injury is of occasional bouts of back pain after a period of heavy work, but these were isolated and did not prevent Ms Siganto from starting work with the respondent after a medical assessment, incuding the back.

40. In the lift incident there were changes in the pathology bringing on symptoms including referred pain in the legs. Dr Hudson records the symptoms in his report of 18 June 2019,

> "The chief complaint is of low back pain with radiation of symptoms down the back of both legs. She has trouble standing up after sitting. She complains of cramps in both legs. It wakes her up when she attempts to turn over in bed and she has a complaint of pins and needles in both feet. The lower back pain is worse on the right than the left and she feels that it is affecting her knees. She is not sleeping well and feels that she is not coping well at all."

41. Dr McEntee records the pathology behind the symptoms,

> "Ms Siganto presents with a very collapsed L5-S1 disc with bilateral foraminal stenosis and compression of her exiting L5 nerves, as well as a traversing left S1 nerve.

[1] See *Comcare v Martin* [2016] HCA 43

Ms Siganto's symptoms have not improved over a six month period and after an epidural steroid injection."

42. There was no further event following the injury that interrupts the causal chain. The new and more severe symptoms resulting from the injury caused the incapacity and are the cause of the need for sugery.

43. For the above reasons I find that the injury on 4 July 2018 which comprised the aggravation, acceleration, exacerbation or deterioration of a disease process of the lumbar spine is the cause of Ms Siganto's incapacity and is a material contribution to the need for the L5/S1 disc replacement surgery.

Entitlement to weekly compensation

44. It follows from the above findings that Ms Siganto is entitled to weekly compensation for the periods of incapacity. As agreed at the arbitration hearing this is to be negotiated by the parties, with leave to apply.

Medical expenses

45. It follows from the above findings that Ms Siganto is entitled to section 60 of the 1987 Act expenses, including expenses for the proposed lumbar disc replacement surgery.

SUMMARY

46. The incapacity suffered by the Ms Siganto results from the injury in the course of her employment with the respondent on 4 July 2018.

47. As agreed at the arbitration hearing the parties are to attempt to reach agreement as to the entitlement for weekly compensation arising from the above finding. Leave to apply on this issue.

48. The L5/S1 disc replacement surgery is reasonably necessary as a result of Ms Siganto's work injury on 4 July 2018.