

# WORKERS COMPENSATION COMMISSION

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

---

<b>Matter Number:</b>	<b>M1-4923/19</b>
<b>Appellant:</b>	<b>Christopher Halligan</b>
<b>Respondent:</b>	<b>Alco Battery Sales (Aust) Pty Ltd</b>
<b>Date of Decision:</b>	<b>20 February 2020</b>
<b>Citation:</b>	<b>[2020] NSWCCMA 27</b>

---

<b>Appeal Panel:</b>	
<b>Arbitrator:</b>	<b>Marshal Douglas</b>
<b>Approved Medical Specialist:</b>	<b>Dr John Dixon-Hughes</b>
<b>Approved Medical Specialist:</b>	<b>Dr Neil Berry</b>

---

### BACKGROUND TO THE APPLICATION TO APPEAL

1. On 19 December 2019, Christopher Halligan (the appellant) lodged an Application to Appeal Against the Decision of Approved Medical Specialist. The medical dispute was assessed by Dr Siu Kin Cyril Wong, an Approved Medical Specialist (AMS), who issued a Medical Assessment Certificate (MAC) on 21 November 2019.
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 assessment was made on the basis of incorrect criteria,
  - 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 Act. An Appeal Panel determines its own procedures in accordance with the WorkCover Medical Assessment Guidelines.
5. Other than the assessment of permanent impairment relating to impairment of the visual system, the assessment of permanent impairment is conducted in accordance with the *NSW Workers Compensation Guidelines for the Evaluation of Permanent Impairment, 4<sup>th</sup> ed* 1 April 2016 (the Guidelines) and the *American Medical Association Guides to the Evaluation of Permanent Impairment, 5<sup>th</sup> ed* (AMA 5). Where impairment of the visual system is being assessed, AMA 4 is used instead of AMA 5.

### RELEVANT FACTUAL BACKGROUND

6. The appellant suffered an injury to his eyes and digestive system on 6 July 2017 while working for Alco Battery Sales (Aust) Pty Limited (the respondent). The injury occurred due to acid from scrap batteries splashing on to the appellant's face and to the appellant ingesting some of that acid.

7. The appellant claimed compensation from the respondent for permanent impairment resulting from his injury. A medical dispute arose between the parties regarding the degree of the appellant's permanent impairment, precipitating the appellant commencing proceedings in the Commission for a determination of his claim.
8. On 16 October 2019, a delegate of the Registrar referred the medical dispute, insofar as it related to the appellant's impairment of his digestive system, to the AMS to assess. The delegate also referred the medical dispute insofar as it related to the appellant's visual system to Approved Medical Specialist Dr Michael Steiner to assess. The AMS was appointed the lead assessor, meaning he had responsibility for combining the impairment he assessed the appellant to have relating to the digestive system with the impairment Dr Steiner assessed he had with respect to the visual system.
9. Dr Steiner issued a Medical Assessment Certificate with respect to the appellant's impairment of his visual system certifying the appellant had 8% whole person impairment (WPI) from the injury. As mentioned above the AMS issued a MAC on 21 November 2019. In that he certified the appellant's WPI from his injury, insofar as it affected the appellant's digestive tract, was 2%. The AMS further certified that the appellant's total WPI resulting from his injury on 6 July 2017 was 10%, which combined what he had assessed the appellant to have with the impairment that Dr Steiner had assessed the appellant to have.
10. The appellant's appeal relates only to the AMS's assessment of his permanent impairment with respect to his digestive system. In other words, no challenge is made to Dr Steiner's assessment of the appellant's permanent impairment relating to his visual system resulting from the appellant's injury on 6 July 2017.

#### **PRELIMINARY REVIEW**

11. 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.
12. As a result of that preliminary review, the Appeal Panel determined that it was not necessary for the appellant to undergo a further medical examination. This is because the material before the Appeal Panel is sufficient to enable it to assess the medical dispute that was referred to the AMS for assessment. The Appeal Panel considered no further information useful evidence would be obtained to enable it to assess the medical dispute by examining the appellant.

#### **EVIDENCE**

13. 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**

14. The history the AMS obtained and set out within Part 4 of the MAC included the circumstances in which the appellant suffered injury on 6 July 2017. The AMS noted that some of the acid from the scrap batteries had entered the appellant's nose and mouth.
15. The AMS noted that the appellant consulted a gastroenterologist at Canberra Hospital following his injury, who carried out a gastroscopy that was normal. That doctor also arranged for an antral biopsy that revealed helicobacter gastritis. The AMS noted that a second endoscopy was done at Wagga Wagga that was also reported to be normal.

16. The AMS noted that since the appellant's injury the appellant experiences difficulty consuming hot foods and drinks and experiences heartburn after eating spicy food and that the appellant now avoids hot foods, spicy foods, coffee and tea. The AMS noted that the appellant experiences symptoms of epigastric pain, heartburn and reflux and that he has a dry and itchy throat. The AMS noted the appellant takes Nexium 20 mg once a day for symptoms of reflux. The AMS noted that the appellant has lost 20 kg in weight following his injury. The AMS noted that the appellant has a dry and itchy throat and due to this the appellant has difficulty in swallowing and has pain on swallowing.

17. The AMS recorded in Part 5 of the MAC his findings from his examination of the appellant, which were:

“Mr Halligan was informed at the time of the examination not to engage in any manoeuvre beyond what he could tolerate or any manoeuvre that might cause him harm or injury. He weighed 115 kilograms and had a height of 188 cm. He walked with a normal gait and looked healthy. He sat comfortably with no apparent physical distress. He was cooperative throughout the examination.

#### GIT examination

Mr Halligan was not malnourished with BMI 32.5 indicating class 1 obesity. He had normal coloration. He was well hydrated. Abdominal examination showed mild tenderness at the right side of the abdomen. The abdomen was soft with no guarding. There were no abnormal masses palpable. Examination of the perianal region revealed no evidence of prolapsed haemorrhoids. However, there was an obvious chronic anal fissure at 6 O'clock position on spreading of the buttock cheeks. There was no prolapsed haemorrhoid. Per rectal digital examination was not performed.”

18. The AMS summarised the reports of the relevant investigations the appellant had done of his digestive system in the following terms:

“July 7, 2017 Endoscopy report Dr Paul Pavli - Oesophagus, stomach and duodenum normal. No evidence of upper GI damage following inadvertent exposure to industrial strength acid.

July 7, 2017 X-ray abdomen and chest erect - Moderate faecal loading.  
Chest X-ray normal.

July 14, 2017 Histopathology report Dr Michael Brown- Helicobacter gastritis.  
No ulceration. Duodenum normal.”

19. As already mentioned, the AMS assessed that, resulting from the appellant's injury on 6 July 2017, the appellant's WPI relating to the appellant's digestive system is 2%. The AMS provided this explanation for his assessment at Part 10a of the MAC.

“Chris Halligan had injury to the digestive system while at work. I have assessed the whole person impairment at 2%.

In making that assessment I have taken account of the following matters: -

- The upper digestive tract was rated at 0% WPI in absence of objective evidence of upper digestive tract injury from the work accident dated 6 July 2017.
- The lower digestive tract was rated at 2% WPI for mild and intermittent symptoms of anal pain on defaecation and PR bleeding and clinical signs of a chronic anal fissure.”

## SUBMISSIONS

20. Both parties made written submissions. They are not repeated in full, but have been considered by the Appeal Panel.
21. The appellant in his appeal against the MAC takes issue only with the AMS's assessment of his impairment with respect to the upper digestive tract.
22. The Appeal Panel has paraphrased the appellant's submission so as to summarise them. The appellant submits that the AMS applied incorrect criteria to assess the impairment of his upper digestive tract, and as a consequence the MAC contains a demonstrable error, because the AMS misinterpreted [16.9] of the Guidelines as amending AMA 5 Table 6-3 Class 1 so as to require objective evidence of digestive tract disease in order that the effects of his injury could be classified as falling within Class 1. The appellant submits that the amendment stipulated by [16.9] relates only to the circumstance where impairment is due to the effects of analgesics on the digestive tract. The appellant submits that in his case he has symptoms of upper digestive tract disease, and these are unrelated to the taking of analgesics, and consequently the AMS ought to have considered his symptoms and assessed him as having an impairment of his upper digestive tract resulting from the injury on 6 July 2017 that fell within Class 1. It did not matter that there was no objective evidence, or signs, of upper digestive tract disease because his symptoms were unrelated to the taking of analgesics.
23. In reply, the respondent submits that if the "amendment of AMA 5, as provided for by 16.9 of the Guidelines, was intended to apply only in the specific circumstances submitted by the appellant, this would be clearly articulated in the Guidelines".

## FINDINGS AND REASONS

24. 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.
25. In *Campbelltown City Council v Vegan* [2006] NSWCA 284 the Court of Appeal held that the Appeal Panel is obliged to give reasons.
26. The Guidelines at [16.9] read as follows:

**"16.9 Effects of analgesics on the digestive tract:**

- AMA5 Table 6-3 (p 121) Class 1 is to be amended to read 'there are symptoms and signs of digestive tract disease'.
- Nonsteroidal anti-inflammatory agents, including Aspirin, taken for prolonged periods can cause symptoms in the upper digestive tract. In the absence of clinical signs or other objective evidence of upper digestive tract disease, anatomic loss or alteration a 0% WPI is to be assessed.
- Effects of analgesics on the lower digestive tract:
  - Constipation is a symptom, not a sign and is generally reversible.
  - A WPI assessment of 0% applies to constipation.
- Irritable bowel syndrome without objective evidence of colon or rectal disease is to be assessed at 0% WPI.
- Assessment of colorectal disease and anal disorders requires the report of a treating doctor or family doctor, which includes a proper physical examination with rectal examination if appropriate, and/or a full endoscopy report.
- Failure to provide such reports may result in a 0% WPI."

(Bold as per original)

27. Contrary to what the respondent has submitted, the Appeal Panel considers that it is clear from [16.9] of the Guidelines that the amendment to AMA 5 Table 6-3 Class 1 relates only to the circumstance where analgesics have had an effect on the upper digestive tract. Indeed, in the Appeal Panel's view, the instruction provided by [16.9] could not be more pellucid. Consequently, objective evidence, that is signs, of the appellant having digestive tract disease was not required in order that the appellant's impairment could be assessed as falling within Class 1 of AMA 5 Table 6-3.
28. The requirements stipulated by Table 6-3 for a Class 1 impairment are: Panel notes reads as follows:
- "Class 1
- 0%-9% Impairment of the Whole Person
- Symptoms or signs of upper digestive tract disease, or anatomic loss or alteration
- and
- continuous treatment not required
- maintains weight at desirable level
- or
- no sequelae after surgical procedure."
29. Hence, if as a consequence of an injury a worker has suffered, the worker experiences symptoms of upper digestive tract disease, then the worker's impairment from those symptoms may be classified as falling within Class 1 and invite a rating of between 0-9% WPI. As to how it is rated, will of course depend on the symptoms the worker experiences.
30. In the appellant's case, his symptoms are epigastric pain, heartburn and reflux. These are symptoms (not signs) of upper digestive tract disease. The AMS accordingly did not apply the correct criteria to assess the appellant's permanent impairment insofar as it related to his upper digestive tract and, as a consequence of that also, the MAC contains a demonstrable error. Given that, the Appeal Panel must re-assess the medical dispute, insofar as it relates to the appellant's impairment of his digestive symptom.
31. As mentioned earlier, the appellant did not challenge the AMS's assessment of his permanent impairment with respect to his lower digestive tract. Because the Appeal Panel must re-assess the medical dispute referred for assessment, the Appeal Panel must nevertheless re-assess that element of the medical dispute.
32. The Appeal Panel observes from the MAC that the AMS obtained a thorough history and that he carried out a thorough examination of the appellant's digestive tract. The Appeal Panel considers the AMS's history and findings from his examination are sound and the Appeal Panel adopts the AMS's history and findings. The Appeal Panel notes that those findings, with respect to the digestive tract, were that the appellant had mild tenderness of the right side of the abdomen, that the appellant's abdomen was soft with no guarding, that there were no abnormal masses palpable and that the perianal region revealed no evidence of prolapsed haemorrhoids but did reveal a chronic anal fissure. The Appeal Panel notes that the endoscopies the appellant had done revealed no evidence of lower digestive tract disease. The Appeal Panel also notes that the history the AMS obtained, with respect to the appellant's digestive tract, included the appellant experiencing mild and intermittent symptoms of anal pain on defecation and PR bleeding.

33. Based on that history and those findings the Appeal Panel also assesses the appellant's permanent impairment resulting from his injury insofar as it affects his lower digestive tract to the 2% WPI.
34. With respect to the appellant's upper digestive tract, as mentioned, the appellant experiences symptoms of upper digestive tract disease, being intermittent discomfort and swallowing, reflux, epigastric pain and heartburn. The appellant avoids hot food and spicy foods. The appellant has lost 20 kg in weight, but his weight was found by the AMS to be 115 kg. Based on AMA 5 Table 6-1, that is far greater than the desirable weight for someone of the appellant's height, which is 188 centimetres. The appellant's present weight indicates that the injury to his digestive tract, including his upper digestive tract, does not affect his nutritional intake.
35. Having regard to the appellant's symptoms relating to his upper digestive tract, which in the Appeal Panel's view has a significant impact on the appellant, the Appeal Panel considers that it is appropriate that the appellant's impairment be classified as being in the middle of the range of 0% to 9% provided within Class 1 of Table 6-3. In the circumstances, the Appeal Panel assesses the appellant's WPI with respect to his upper digestive tract to be 4% WPI. That, when combined with the impairment he has of his lower digestive tract and with the impairment Dr Steiner assessed him to have with respect to his visual system, means that the appellant has a total 14% WPI resulting from his injury of 6 July 2017.
36. For these reasons, the Appeal Panel has determined that the MAC issued on 21 November 2019 should be revoked, and a new MAC should be issued. The new certificate is attached to this statement of reasons.

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*.

*A MacLeod*

Ann MacLeod  
Dispute Services Officer  
**As delegate of the Registrar**



# WORKERS COMPENSATION COMMISSION

## APPEAL PANEL MEDICAL ASSESSMENT CERTIFICATE

Injuries received after 1 January 2002

**Matter Number:** 4923/19  
**Applicant:** Christopher Halligan  
**Respondent:** Alco Battery Sales (Aust) Pty Ltd

This Certificate is issued pursuant to s 328(5) of the *Workplace Injury Management and Workers Compensation Act 1998*.

The Appeal Panel revokes the Medical Assessment Certificate of Dr Siu Kin Cyril Wong and issues this new Medical Assessment Certificate as to the matters set out in the Table below:

**Table - Whole Person Impairment (WPI)**

Body Part or system	Date of Injury	Chapter, page and paragraph number in WorkCover Guides	Chapter, page, paragraph, figure and table numbers in AMA5 Guides	% WPI	Proportion of permanent impairment due to pre-existing injury, abnormality or condition	Sub-total/s % WPI (after any deductions in column 6)
1. Digestive System	6 July 2017	Chapter 16	AMA 5 Tables 6-1 and 6-3	6%	-	6%
2. Visual System (Dr Michael Steiner)	6 July 2017		AMA 4 Paragraph 3 Chapter 8 Page 209 Tables 6 and 7	8%	-	8%
<b>Total % WPI (the Combined Table values of all sub-totals)</b>						<b>14%</b>

The above assessment is made in accordance with the Guidelines for the Evaluation of Permanent Impairment for injuries received after 1 January 2002

**Marshal Douglas**  
Arbitrator

**Dr John Dixon-Hughes**  
Approved Medical Specialist

**Dr Neil Berry**  
Approved Medical Specialist

20 February 2020

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

*A MacLeod*

Ann MacLeod  
Dispute Services Officer  
**As delegate of the Registrar**

