WORKERS COMPENSATION COMMISSION

CERTIFICATE OF DETERMINATION

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

Matter Number: **5531/20**
Applicant: **Mico Djukic**
Respondent: **Programmed Skilled Workforce**
Date of Determination: **12 February 2021**
Citation No: **[2021] NSWWCC 47**

The Commission determines:

1. The applicant suffered injury to his right lower extremity (knee) and lumbar spine in the course of his employment with the respondent on 3 July 2017.

2. The applicant's employment was a substantial contributing factor to his right lower extremity injury and the main contributing factor to his lumbar spine injury, the latter being an aggravation of a pre-existing degenerative condition.

3. The matter is remitted to the Registrar for referral to an Approved Medical Specialist for determination of the permanent impairment arising from the following:

    (a) Date of injury: 3 July 2017.
    (b) Body systems referred: Right lower extremity (knee); lumbar spine.
    (c) Method of assessment: Whole person impairment.

4. The documents to be referred to the Approved Medical Specialist to assist with the determination includes the following:

    (a) This Certificate of Determination and Statement of Reasons;
    (b) Application to Resolve a Dispute and attached documents;
    (c) Reply and attached documents, and
    (d) Report of Dr Timothy Siu dated 29 May 2018.

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

Cameron Burge
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 CAMERON BURGE, ARBITRATOR, WORKERS COMPENSATION COMMISSION.

A Sufian

Abu Sufian
Senior Dispute Services Officer
As delegate of the Registrar

STATEMENT OF REASONS

BACKGROUND

1. Mr Mico Djukic (the applicant) brings proceedings seeking permanent impairment compensation in respect of an injury to his right lower extremity and alleged injury to his lumbar spine, said to arise from a slip and fall in the course of his employment with Program Skilled Workforce (the respondent) on 3 July 2017.

2. The applicant claims the fall caused a frank injury to his right lower extremity by way of a ruptured anterior cruciate ligament together with an aggravation or exacerbation of a pre-existing degenerative condition in his lumbar spine.

3. The respondent accepts liability with regard to the applicant's right leg injury, however, it alleges the incident at issue did not lead to any permanent impairment of the lumbar spine and that the applicant's low back issues instead relate to longstanding, pre-existing lumbosacral disease and not any aggravation caused by the workplace injury.

ISSUES FOR DETERMINATION

4. The only issue for determination is whether the applicant suffered an injury to his lumbar spine by way of aggravation of an underlying condition.

5. If the applicant succeeds on this issue, both the right lower extremity and lumbar spine injuries will be referred to an Approved Medical Specialist (AMS) to assess the degree of the applicant's whole person impairment. If the applicant is unsuccessful, there will be an award for the respondent, as on the applicant's own case, his right leg injury does not give rise to a whole person impairment which exceeds the 10% threshold.

PROCEDURE BEFORE THE COMMISSION

6. 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.

7. The parties attended a hearing on 15 December 2020. At the conclusion of the hearing, directions were made for written submissions concerning the proposed tender of a medical report of treating neurosurgeon, Dr Timothy Siu dated 29 May 2018. After the hearing, the respondent's solicitors contacted the Commission and advised they had no objection to the admission of that report, and it was accordingly admitted into evidence and taken into consideration in making this decision.

8. At the hearing, the applicant was represented by Ms E Grotte of Counsel instructed by Mr A Edward-Joy, solicitor. The respondent was represented by Ms L Goodman of Counsel instructed Mr M Lee, solicitor.

EVIDENCE

Documentary evidence

9. The following documents were in evidence before the Commission and taken into account in making this determination:

    (a) Application to Resolve a Dispute (the Application) and attached documents;

(b) Reply and attached documents, and

(c) Report of Dr Timothy Siu dated 29 May 2018, admitted without objection and marked Exhibit A.

Oral evidence

10. There was no oral evidence called at the hearing.

FINDINGS AND REASONS

Whether the applicant suffered an injury by way of aggravation to his lumbar spine in the fall on 3 July 2017

11. The applicant bears the onus of proving the fall on 3 July 2017 was the main contributing factor to an aggravation, acceleration or exacerbation of the accepted degenerative disease process in his lumbar spine.

12. The High Court considered the issue of aggravation and exacerbation of disease processes in *Federal Broom Co Pty Ltd v Semlitch* (1963) 110 CLR 626 (*Semlitch*). Kitto J said:

> "There is an exacerbation of a disease where the experience of the disease by the patient is increased or intensified by an increase or intensifying of symptoms. The word is directed to the individual and the effect of the disease upon him rather than being concerned with the underlying mechanism".

13. Windeyer J said in the same matter, "[t]he question that each [aggravation; acceleration; exacerbation; deterioration] poses is, it seems to me, whether the disease has been made worse in the sense of more grave, more grievous or more serious in its effects upon the patient" (at 639) and in relation to whether there was an aggravation, his Honour said "… the answer depends upon whether for the sufferer the consequences of his affliction have become more serious" (at 637).

14. Burke CCJ applied *Semlitch* in the matter of *Cant v Catholic Schools Office* [2000] NSWCC 37; (2000) 20 NSWCCR 88 (*Cant*) and said:

> "The thrust of these comments is that irrespective of whether the pathology has been accelerated there is a relevant aggravation or exacerbation of the disease if the symptoms and restrictions emanating from it have increased and become more serious to the injured worker." (at [17])

15. In *Australian Conveyor Engineering Pty Ltd v Mecha Engineering Pty* Ltd (1998) 45 NSWLR 606 (*Mecha*) the Court of Appeal said the words "injury consists in the aggravation ...of a disease" in section 16(1) should be construed as not referring to something which is an injury independently of its aggravating effects on a previously existing disease, but as being confined to what are entirely injuries by aggravation (Sheller JA at 616).

16. The question of "main contributing factor" in claims surrounding injuries involving a disease process was also considered by Arbitrator Harris in *Ariton Mitic v Rail Corporation of NSW* (Matter number 8497 of 2013, 8 April 2014). In considering the terms of section 4(b)(ii), the Arbitrator said:

> "The opening words of the amended s. 4(b)(ii) relate to the aggravation, acceleration, exacerbation or deterioration 'in the course of employment of any disease'. In my view, those opening words therefore direct attention to the work-related component of the 'aggravation, acceleration, exacerbation or deterioration'. The following words of clause (ii) then state 'but only if the

employment was the main contributing factor to the aggravation, acceleration, exacerbation or deterioration of the disease'. The concluding words of clause (ii) requires an examination of whether the employment was the main contributing factor 'to the aggravation, acceleration, exacerbation or deterioration of that disease' and not to the overall pathology or the overall disease process…

In my view, the amendment to s 4(b)(ii) does not require the applicant to establish that the employment must be the main contributing factor to the overall disease process or pathology within his left knee but simply that the employment must be the main contributing factor to the injury, that is, the aggravation, acceleration, exacerbation or deterioration of such disease."

17. Arbitrator Rimmer adopted this approach in *Mylonas v The Star Pty Ltd* [2014] NSWWCC 174 at [151]-[166], as did Arbitrator Edwards in *Egan v Woolworths Limited* [2014] NSWWCC 281 at [60]-[82]. Arbitrator Harris further considered the approach in *Harrison v Central Coast Local Health District* [2015] NSWWCC 86. In *Meaney v Office of Environment and Heritage – National Parks and Wildlife Service* [2014] NSWWCC 339 (at [138]-[147]) and *Wayne Robinson v Pybar Mining Services Pty Ltd* [2014] NSWWCC 248, Arbitrator Capel (as he then was) considered the meaning of "main contributing factor" and interpreted the word "main" to mean "chief" or "principal" (at [78]-[88]).

18. It can therefore be said that the proper test is whether the aggravation impacted the individual concerned. It is not necessary for the particular disease to be made worse: *Cabramatta Motor Body Repairers (NSW) Pty Ltd v Raymond* [2006] NSWWCCPD 132; (2006) 6 DDCR 79 (*Raymond*) applying *Semlitch* and *Cant*. In *Raymond*, Roche ADP (as he then was) was satisfied that, on the whole of the evidence, it was open to an Arbitrator to conclude that the worker suffered an aggravation of his occupational asthma, in the sense that the symptoms increased and became more serious while employed (at [45-47]).

19. Snell DP dealt with the nature of the test for "main contributing factor" *AV v AW* [2020] NSWWCCPD 9. At [66], the Deputy President said:

> "66. I have previously expressed the view that the test of 'main contributing factor', inserted into the definition of 'injury' in s 4(b) by the 2012 amendments, is more stringent than the test applicable pursuant to s 4(b) in its previous form, which was subject to s 9A of the 1987 Act. There may be more than one 'substantial contributing factor'. "Section 9A requires that the employment concerned be a substantial contributing factor to the injury. That use of the indefinite article admits of the possibility of other, and possibly non-employment-related, substantial contributing factors." On the other hand, the requirement in s 4(b) inserted by the 2012 amendments, that employment be "the main contributing factor" permits the existence of only one such factor. The requirement of 'the main contributing factor' involves a more stringent connection with the employment than the requirement of a 'a substantial contributing factor' that applied to 'disease' injuries prior to the 2012 amendments" …
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> 70. In *Awder Pty Limited t/as Peninsular Nursing Home v Kernick*, I expressed the view that whether 'substantial contributing factor', for the purposes of s 9A of the 1987 Act, was satisfied was "a question to be decided on the evidence overall, including a consideration of the matters described in section 9A(2). It is not purely a medical question." That view was applied by Keating P in *Hogno v Fairfax Regional Printers Pty Limited* and by Roche DP in *Villar v Tubemakers of Australia Pty Ltd*. The test of 'main contributing factor', like that of 'substantial contributing factor', involves a broad evaluative consideration of potential competing causative factors. It should be decided on the evidence overall and is not purely a medical question.

71. In *El-Achi* Roche DP, considering the Application of the test in s 4(b)(ii) in its current form, said:

> "That a doctor does not address the ultimate legal question to be decided is not fatal (*Guthrie v Spence* [2009] NSWCA 369; 78 NSWLR 225 at [194] to [199] and [203]). In the Commission, an Arbitrator must determine, having regard *to the whole of the evidence*, the issue of injury, and whether employment is the main contributing factor to the injury. That involves an evaluative process." (emphasis added)

72. I agree with the above passage from *El-Achi*. The Deputy President in *El-Achi* also referred, in my view correctly, to the 'main contributing factor' test as "one of causation". This is consistent with the discussion of s 9A of the 1987 Act by the Court of Appeal in *Badawi v Nexon Asia Pacific Pty Limited.* Their Honours referred to the "causative element" of the test in s 9A. It is consistent with the discussion in *State of New South Wales v Rattenbury* in which Roche DP, dealing with s 4(b) after the 2012 amendments, discussed whether 'main contributing factor' was satisfied, by reference to whether there were competing causal factors to the relevant 'disease' injury.

73. In *Bradley*, a case involving s 4(b)(ii) in its current form, King SC ADP referred to the question posed by an Arbitrator, "whether or not ... the [worker's] work throughout his working life as a painter and decorator had been the main contributing factor to the aggravation of his shoulder disease". The Acting Deputy President described this question as the correct one."

20. It is apparent from the above authorities that the appropriate question is whether an injured worker's employment was the main contributing factor to the aggravation of the condition, rather than to the condition itself. In examining this question, an Arbitrator must broadly consider and evaluate the potential competing causative factors and decide the question on all available lay and medical evidence.

The applicant's submissions

21. Ms Grotte noted the applicant had suffered an episode of lumbar spine discomfort and sciatic symptoms while undertaking carpentry work some 8-9 years before the injury at issue, but he was asymptomatic prior to the injury.

22. The applicant submitted his knee injury was initially his primary focus and its severity, including the requirement for reconstructive surgery, led to him taking strong doses of powerful painkillers which masked the symptoms in his back. He stated that in the immediate aftermath of the fall, he had pain in his back radiating down his right leg, but the right knee pain was causing the most discomfort. Ms Grotte submitted the applicant became aware of ongoing problems with his back once he began to wean off large doses of painkilling medication, approximately three months post-surgery. She noted the applicant underwent right anterior cruciate ligament reconstruction at the hands of Dr Summersell, orthopaedic surgeon on 26 July 2017, and this injury was the focus of the applicant's attention in the lead up to and following the surgery.

23. The applicant stated that in the aftermath of the operation, he was taking significant doses of very powerful pain medication, including six to eight 10 mg Endone tablets per day, for approximately three months post-operation, and similar doses of OxyContin.

24. Ms Grotte referred to the applicant's statement at page 263 of the Application, where he stated:

> "21. Once I stopped taking Endone and Oxycotton [sic] after the three-month period, I noticed tingling and numbness on the inside of my leg and also through my back. The Endone had masked all of these before. I could barely feel my leg when I was on Endone.
>
> 22. It was clear to me that once the medication began to wear off, I began to feel a similar tingling sensation of pain in my lower back. The pain was identical to what I was feeling when I initially suffered my workplace injury. I actually found though this time around that the pain was a little bit worse. For example, the tingling sensation of pain was much more noticeable and would often radiate down my right leg.
>
> 23. I was now experiencing hot and cold sensations down my right leg.
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> 24. It was very obvious to me that the medication that I was on prevented me from experiencing the severe level of pain I was experiencing in my low back. As I had mentioned before, I never had any severe issues with my back prior to my workplace injury. "Had I not had the fall where I injured my back at work, I believed I would not have been suffering from severe back pain today."

25. Ms Grotte submitted the applicant's history is consistent with the notes of his GP, Dr Ellis, who on 18 January 2018 recorded the applicant suffering from right-sided lumbar radiculopathy, and with the applicant having being referred for a CT scan on 21 November 2017 which showed lumbar disc protrusions.

26. The applicant submitted, consistent with established authority that he does not need to demonstrate the workplace injury caused the underlying condition in his back, but rather that it was the main contributing factor to the aggravation of that condition.

27. Ms Grotte noted the applicant's evidence is consistent with the history taken by treating knee surgeon, Dr Summersell in his report to the general practitioner dated 27 October 2017, some three months post knee surgery. In that report, Dr Summersell recorded the applicant complained of "tingling in the medial aspect of the distal half of the thigh." (see Application p199). That history is in turn consistent with that taken by Independent Medical Examiner (IME), Dr Poplawski, who noted at page 2 of his report:

> "Once he modified his analgesic intake, Mr Djukic stated that he noted some intermittent discomfort in his lower back and the feeling of uncomfortable numbness down the lateral aspect of his right thigh and lower leg and unpleasant paraesthesia in the medial aspect of his right thigh."

28. Ms Grotte addressed an entry in the GP clinical records from 15 November 2017, in which Dr Ellis recorded the applicant suffering from left leg numbness and paraesthesia since the injury, becoming more noticeable as his knee improved. That entry seems at odds with the other notes of Dr Ellis, in which he referred to problems of a radicular nature in the applicant's right leg, including an entry on the same date as that which recorded left leg numbness.

29. Ms Grotte submitted the complaints of left limb paraesthesia are not inconsistent with the results of the radiological investigations, which showed bilateral lumbar spine disc protrusions on both CT and MRI investigation.

30. The applicant relied upon the report of IME Dr Poplawski, and in particular, his finding at page 7 of his report:

> "In my opinion, it is more likely than not that Mr Djukic's back and leg pain were also caused by this accident with symptoms at these sites related to the episode not appreciated during the time he was taking significant amounts of Endone to control his knee pain. It was only after he had discontinued taking this medication that he became aware of his back and leg symptoms."

31. Ms Grotte submitted that opinion is consistent with the applicant's complaints, and with the views of treating surgeon, Dr Summersell who diagnosed in his report to the general practitioner dated 28 March 2018 "neurological symptoms probably from his back", and recommended referral to a spinal surgeon.

32. Ms Grotte noted the respondent's IME, Dr Shatwell took a short history in his report dated 3 July 2018, which was "he twisted his right knee violently and had severe pain in his knee", and made no mention of the applicant suffering a violent fall onto his back. She submitted this was a significant omission as the mechanism of the fall was a relevant consideration when determining the cause of the applicant's symptoms.

33. In summary, Ms Grotte submitted the applicant has been consistent in his history and the Commission would accept his version of events and as such, that high doses of pain medication masked the nature and extent of the aggravation to his back problems caused by the injury at issue.

The respondent's submissions

34. Ms Goodman submitted the history in the applicant's statement is inconsistent with that provided in the contemporaneous accounts to various doctors. She noted that when the applicant first presented to his general practitioner on the day after the incident at issue, the history recorded by the doctor was "getting off a boat onto a concrete ramp and twisted right knee."

35. The respondent noted there was no mention at all of back pain in Dr Summersell's initial report, nor was there any mention of back problems in multiple visits to the applicant's general practitioner between the date of the incident and approximately three months post-surgery. Ms Goodman submitted the initial complaint of numbness post-operation was to the applicant's physiotherapist, who in turn noted symptoms in his left leg, not the right.

36. The respondent noted both IMEs found a full range of lumbar motion, and Ms Goodman submitted Dr Shatwell's opinion that there were no objective neurological signs of lumbar nerve root impingement should be preferred. She submitted, in accordance with Dr Shatwell's opinion, that:

> "It is also pertinent to add the late onset of neurological symptoms in the right leg is possibly due to nerve root irritation in the lumbar spine which was not due to the initial injury. No lumbar spine injury was reported initially and any direct injury to the lumbar spine as a result of the fall would not have caused chronic degenerative changes in the lumbar spine seen on the CT scan performed on 21 November 2017 or the MRI scan of 9 December 2017."

37. Ms Goodman noted that while the applicant blamed heavy doses of opioid medication for masking his spinal symptoms, he in fact did not take such medication until after his knee reconstruction, which itself was on 26 July 2017, three weeks after the injury at work. She submitted that three-week gap was significant, as even though the applicant was not prescribed opioids, there was still no mention of back pain in the period between the injury and the knee surgery.

38. Ms Goodman submitted the Commission would not accept the applicant as a witness of truth given the discrepancies in the histories provided to various doctors with that contained in his statement. She further submitted the applicant had not demonstrated the workplace injury was the main contributing factor to his lumbar spine symptoms.

39. The respondent noted there was an absence of clinical records from Macksville Hospital from the date of injury, which would have been helpful to the Commission, and asked a *Jones v Dunkel* (1959) 101 CLR 298 at 320 inference be drawn that those records would not have assisted the applicant's case had they been before the Commission.

Consideration

40. In my view, the applicant has demonstrated on the balance of probabilities that the workplace incident was the main contributing factor to the aggravation of his lumbar spine symptoms, for the following reasons.

41. There is no issue the applicant suffered pre-existing degenerative changes to his lumbar spine. I accept the applicant's evidence that at the time of the injury his lumbar spine was asymptomatic, and certainly there are no records which suggest attendances in relation to his low back before the injury at issue. Moreover, the applicant volunteered a previous episode of lumbar sciatica which both took place and resolved many years before the incident at issue.

42. Although the respondent contended the applicant had not provided a history of an actual fall to any of his doctors in the incident at issue, the evidence does not support that submission. On 21 July 2017, just 18 days post-injury, Dr Summersell reported to the applicant's general practitioner the incident on 3 July 2017 when "he slipped on a slippery boat ramp while berthing the boat. He describes the knee flexing in underneath him and him falling to the right."

43. It is therefore apparent the applicant disclosed to his treating surgeon within a matter of weeks at the latest that he had in fact suffered a fall. The report from Dr Summersell, combined with the caution with which tribunals of fact are advised to treat the histories contained within the clinical records of treating practitioners, in my view over comes the respondent's submission concerning a lack of early history regarding a fall.

44. I also note the history provided by the applicant to Dr Siu as recounted in his report of 29 May 2018. Dr Siu recorded "approximately nine months ago, he slipped while working, landing on his right knee and buttock." That history, combined with the history provided by Dr Summersell in his report of 21 July 2017, in my view obviates any suggestion the applicant's history contained in his statement was a recent invention.

45. Whilst the applicant was not taking Endone or OxyContin between the date of injury and his operation, it is apparent he was seeking medical treatment at that time primarily for the knee injury. As such, the applicant's statement that the knee injury preoccupied him in the immediate aftermath of the fall is consistent with the contemporaneous records. Although it is true the applicant did not begin to take those particular drugs until after his operation, the GP clinical records reveal he was prescribed Tramadol capsules 50 mg, and told to take two, four times per day. It is therefore apparent that, contrary to the respondent's assertion, the applicant was taking significant opioid pain medication even before his operation, albeit that medication was not the same as those he took post-surgery.

46. When comparing the IME opinions in this matter, I prefer the views of Dr Poplawski, IME for the applicant who found the fall caused an aggravation of previously asymptomatic lumbar spine changes. In doing so, I have had regard to Dr Shatwell's opinion and note the doctor primarily addresses the question of whether the fall would have caused the degenerative changes in the applicant's lumbar spine, rather than the relevant issue, which is whether the fall caused the aggravation to that degenerative condition.

47. Dr Shatwell opined that any minor sprain or strain of the lumbar spine would have settled within a matter of a few weeks or three months at most, however, he provides no explanation as to why this would be the case, and in any event, the categorisation of the applicant's lumbar spine condition as a minor sprain or strain flies in the face of the objective radiological evidence which showed bilateral disc protrusion.

48. Even if those protrusions were pre-existing, the evidence establishes they were asymptomatic before the injury at issue. There is no suggestion the applicant was suffering back symptoms before the injury, however, in my view the evidence clearly demonstrates he did so afterwards as a result of it.

49. Additionally, Dr Shatwell does not address the question as to whether the pain medication taken by the applicant would have masked his lumbar spine symptoms. The only opinion as to whether this was the case is that of Dr Poplawski, and I accept his opinion on this question, as it is uncontested.

50. In these circumstances, I have no difficulty accepting the applicant's evidence that his primary concern was initially his right knee injury which required reconstruction, and that the pain medication taken by him for that injury masked the effects of his lumbar spine condition, which had previously been asymptomatic.

51. Ms Goodman noted the absence of clinical records from Macksville Hospital from the date of injury and submitted the Commission would draw an inference that those records would not have assisted the applicant if they had been placed into evidence.

52. Whilst the hospital records would most likely have been helpful to the Commission, as are most contemporaneous records in matters of this nature, it is not in my view appropriate to draw such an inference, for the following reasons.

53. The rule in *Jones v Dunkel* was considered by the Court of Appeal in *RHG Mortgage Ltd v Ianni* [2015] NSWCA 56. Although that case related to the absence of evidence given by a witness to a mortgage-related transaction, the court noted the circumstances where the inference could appropriately be drawn.

54. The court reiterated that the circumstances for drawing a *Jones v Dunkel* inference are found where an uncalled witness (or in this instance, an untendered document) is presumably able to put the true complexion on the facts relied on by a party as the ground for any inference favourable to them. The three conditions to be applied are:

    - whether the uncalled evidence would be expected to be called by one party rather than the other;
    - whether the evidence would elucidate the matter; and
    - whether its absence is unexplained.

55. Further assistance on the application of a *Jones v Dunkel* inference was provided by the Court of Appeal in *Gaskell v Denkas Building Services Pty Limited* (2008) NSWCA 35. That case makes it clear a tribunal of fact does not need to draw an inference adverse to a party which has not called evidence of a relevant matter. The failure of a party to call a witness (or tender evidence) does not necessarily give rise to an adverse inference being drawn in accordance with *Jones v Dunkel*. Such an inference is available only if evidence otherwise provides a basis on which that unfavourable inference can be drawn. An unfavourable inference cannot be drawn solely on the basis that the witness was not called or the evidence not tendered. There must be a basis elsewhere in evidence to support the inference.

56. I am of the view no such basis exists in this matter. Firstly, there is no evidence the applicant had the hospital records at his disposal and omitted to include them in the Application. Moreover, the documents are a business record capable of being obtained by both parties to the proceedings. Moreover, having accepted the applicant as a witness of truth who volunteered the presence of a previous back issue and whose history of the fall is supported by other treating records, I am not minded to draw an inference against for failing to tender the Macksville Hospital records in this matter. This is particularly the case given the well-known caution which must be had when considering the accuracy and completeness of histories contained in clinical records.

57. In my view, the whole of the lay and medical evidence in this matter supports a finding of the injury at issue having caused an aggravation to a previously asymptomatic lumbar spine condition, and of the effects of that aggravation having been masked by painkillers. I am therefore satisfied on the balance of probabilities that the applicant suffered such an aggravation of his pre-existing lumbar condition in the incident the subject of these proceedings on 3 July 2017, and that the incident was the main contributing factor to that aggravation.

SUMMARY

58. For the reasons advanced above, the Commission will make findings and orders as set out on page 1 of the certificate of determination.