

# WORKERS COMPENSATION COMMISSION

## CERTIFICATE OF DETERMINATION

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

**Matter Number:** 4740/19  
**Applicant:** Mark Andrew Bauchop  
**Respondent:** Roche Products Pty Ltd  
**Date of Determination:** 19 December 2019  
**Citation:** [2019] NSWCC 410

The Commission determines:

1. The applicant suffered an injury as a result of the nature and conditions of his employment with the respondent between 2000 and 2014, by way of an aggravation or exacerbation of a disease process in his left hip, with a deemed date of injury of 14 March 2017 (being the date of the permanent impairment claim).
2. 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: 14 March 2017 (deemed) owing to the nature and conditions of employment between 2000 and 2014;
  - (b) Body systems referred: left lower extremity (hip); scarring (TEMSKI);
  - (c) Method of assessment whole person impairment
3. The documents to be referred to the Approved Medical Specialist to assist in their determination are to include the following:
  - (a) The Certificate of Determination and statement of reasons;
  - (b) The Application to Resolve a Dispute and attached documents;
  - (c) Reply and attached documents;
  - (d) The respondent's Application to Admit Late Documents dated 3 October 2019 and attachments;
  - (e) The respondent's Application to Admit Late Documents dated 25 November 2019 and attached documents.

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.

*S Naiker*

**Sarojini Naiker**  
**Senior Dispute Services Officer**  
**As delegate of the Registrar**



## STATEMENT OF REASONS

### BACKGROUND

1. The applicant alleges he suffered an injury by way of aggravation or exacerbation of a degenerative condition in his left hip as a consequence of his duties with the respondent between 2000 and 2014.
2. He relies on a deemed date of injury of 14 March 2017, which is the date his attorneys made a permanent impairment claim. The applicant also underwent a total left hip replacement by Associate Professor Walton on 8 October 2015.
3. The respondent denies the claim and says if there was any aggravation to the degenerative process, it was caused by a frank incident on 4 November 2014, the effects of which have passed.

### ISSUES FOR DETERMINATION

4. The parties agree the only issue remaining in dispute is whether the applicant's left hip condition was caused by the aggravation or exacerbation of a degenerative disease process as a result of the nature and conditions of his employment with the respondent (section 4(b)(ii) of the *Workers Compensation Act 1987* (the 1987 Act)).

### PROCEDURE BEFORE THE COMMISSION

5. The parties attended a hearing on 2 December 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.
6. At the hearing, Mr S Hickey of counsel appeared for the applicant and Mr D Adikhary of counsel for the respondent.

### EVIDENCE

#### Documentary evidence

7. 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;
  - (c) Respondent's Application to admit late documents (AALD) dated 3 October 2019;
  - (d) Respondent's second AALD dated 25 November 2019 and attached documents.

#### Oral evidence

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

## FINDINGS AND REASONS

### **Did the applicant suffer a section 4(b)(ii) injury to his left hip condition caused by the nature and conditions of his employment between 2000 and 2014?**

9. The applicant must prove the nature and conditions of his employment with the respondent were the main contributing factor to the aggravation or exacerbation of the underlying arthritic condition in his left hip.
10. The medical dispute in this matter essentially turns on the report of Dr Drummond, Independent Medical Examiner (IME) for the respondent. In his opinion, the applicant's work-related issues were caused by a frank incident which occurred on 4 November 2014, the effects of which have passed and been supplanted by pre-existing degenerative changes.
11. By contrast, Dr Bodel (IME for the applicant) was of the view that whilst the underlying degenerative changes in the hip are not work-related, the nature and conditions of the applicant's employment from 2000 to 2014 aggravated or exacerbated that condition, leading to the need for total hip replacement surgery.
12. The applicant relies on what Mr Hickey described as the factual progression of the degenerative process up to the deemed date of injury on 14 March 2017, which is the date on which the applicant's solicitors made a permanent impairment claim on his behalf.
13. The evidence discloses the applicant has a history of hip and low back problems dating back to 2005. After the incident on 4 November 2014, there was a further deterioration in the applicant's symptoms.
14. In my opinion, the evidence discloses on balance that the nature and conditions of the applicant's employment from 2000 to 2014 were the major contributing factor to the aggravation of the degenerative condition in his left hip for the following reasons.
15. The applicant set out his duties as a maintenance fitter for the respondent from the time he was employed by them. He said in his statement that his daily tasks included fitting and assembling parts, as well as manufacturing and repairing equipment and machinery. He said he essentially did everything from working in the production area to data work and moving furniture. The unchallenged evidence of the applicant is he undertook repetitive production work as part of his job description and was also required to lift heavy items, to bend and to kneel.
16. The applicant says he has a history of troubles with his left hip dating back to approximately 2005. He says at that time his condition was investigated, but he received no definitive diagnosis and continued working. He continued to experience symptoms of pain in his left hip until an incident which took place on 4 November 2014.
17. On that occasion, he was squatting down to do some maintenance on floor waste in the factory, which involved draining materials from the relevant area into a pit. The applicant was squatting down in order to undo a waste drain in the floor when he experienced pain in the buttock, left thigh, groin and low back. He describes his left thigh and hip as "locking up."
18. The applicant's condition deteriorated over time to the point where he was seen by Dr Delaney, sports physician and he underwent relevant radiological investigation which confirmed the presence of significant arthritic changes in the left hip joint.
19. The applicant was then referred to Professor Walter, who recommended a total hip replacement which was undertaken on 6 October 2015.

20. In taking into account, the lay and expert evidence in this matter, in my view the evidence discloses on balance that the nature and conditions of the applicant's employment between 2000 and 2014 were the major contributing factor to the aggravation of the arthritic condition in his left hip.
21. Dr Delaney notes the presence of arthritic change in the left hip and concludes that the incident on 4 November 2014 arose *from* the exacerbation of the left hip problems caused through work, rather than being the cause of that exacerbation.
22. In my view, that opinion accords with the longstanding history of hip complaints made by the applicant, including but not limited to 21 treatments for hip problems between November 2006 and March 2007, and the statement evidence of the applicant relating to his ongoing symptoms.
23. As has been held in matters such as *Murray v Shillingsworth* [2006] NSWCA 367, if employment is the major contributing factor to the onset of a relevant exacerbation or aggravation, as opposed to the cause of the underlying pathology itself, then the requirements of section 4(b)(ii) of the 1987 Act are satisfied. In my view, this is such a case.
24. I accept Mr Hickey's submission that Dr Drummond was more focused on the aetiology of the left hip pathology, rather than sufficiently determining the reason for the onset of the applicant's symptoms and any aggravation of that underlying pathology.
25. The opinion of Dr Delaney is, in my view, broadly consistent with that of Dr Bodel, IME for the applicant who says in his supplementary report at page 8 of the Application:

“In my view, the psoriatic arthritis is a contributing factor to the development of osteoarthritic change in the region of the hip in this circumstance. There is clear evidence clinically that the nature and conditions of his work over a period of more than 15 years has caused aggravation, acceleration, exacerbation and deterioration of the disease process...”
26. In other words, Dr Bodel is satisfied the nature and conditions of the applicant's employment were the cause of the aggravation or exacerbation of the underlying arthritic condition.
27. The history taken by Dr Drummond is broadly consistent with that taken by Dr Bodel and Dr Delaney. He noted lower back and left hip/groin problems dating back to at least 2005 associated with the applicant's employment. Dr Drummond opined that the one episode of squatting on 4 November 2014 is not likely to have caused the aggravation of the pre-existing condition. However, he says adopting that position frequently over time is likely to have caused the aggravation.
28. In my view, that opinion actually supports the applicant's contention that the nature and conditions of his employment (including but not limited to squatting) caused the aggravation to his left hip condition.
29. Likewise, Dr Drummond's opinion at page 7 of the Reply that the tear of the labrum was not brought about by the incident on 4 November 2014 but is instead degenerative, does not assist the respondent. In my view, Dr Drummond does not adequately explain why the changes in the left hip are purely degenerative and were not aggravated by the nature and conditions of the applicant's work. To the contrary, to the extent he embarks upon this exercise, his history and conclusions in my view actually support the applicant's case.
30. I do not accept Dr Drummond's view regarding the major contributing factor of symptoms as set out in his report at page 9 of the Reply. I decline to do so because, as Mr Hickey's submitted, Dr Drummond focuses on the cause of the pathology, rather than that of the aggravation and/or exacerbation. This is amply demonstrated by the paragraph towards the

top of page 9 of the Reply where Dr Drummond says employment is not the main contributing factor to the applicant's presentation, but "the main contributing factor is the presence of advanced osteoarthritis in the left hip..." The presence of that arthritis is not in issue. The question at hand is whether that condition was aggravated or exacerbated by the nature and conditions of employment. In my view, Dr Drummond does not adequately deal with that issue.

31. Later at page 9, Dr Drummond dismisses employment as the main contributing factor to the acceleration or exacerbation of the degenerative process in the left hip, however, he provides no explanation as to why this might be the case. Having found the frank incident on 4 November 2014 was not likely to have caused the aggravation of the applicant's underlying pathology, Dr Drummond failed to substantively address whether the nature and conditions of the applicant's employment may have caused the relevant deterioration, aggravation, exacerbation or acceleration. His failure to do so leads me to place less weight on his opinion and to ultimately reject it in favour of those of Dr Bodel and Dr Delaney.
32. The respondent also relied on the report of Dr Dalton dated 25 October 2005. That report noted the applicant's back pain radiated into his left hip region. Mr Adikhary submitted that given the back complaint is not work-related, the pain radiating from it to the applicant's left hip likewise cannot be said to be work-related.
33. I do not accept that submission. The totality of the medical evidence plainly discloses the presence of left hip pathology, not merely referred pain from the low back. That evidence includes the respondent's own IME, Dr Drummond who acknowledges the presence of the pathology, albeit he does not accept either the pathology or the aggravation are work-related.
34. I note the applicant's general practitioner Dr Zerounian provided a short report in which he states the applicant's work is not the main contributing factor to the aggravation or acceleration of the left hip pathology. Although a treating doctor, I prefer the views of Dr Bodel and Dr Delaney, who provide specialist treating and IME opinion. Moreover, Dr Zerounian does not provide reasons for his opinion. Whilst that is not unusual for a treating doctor, in my view without compelling reasoning, his mere statement as to work not being the main contributing factor is not enough to overturn the considered views of Dr Bodel and Dr Delaney.

## **SUMMARY**

35. For the above reasons, I make the findings and orders set out on page 1 of the Certificate of Determination and refer the applicant's left hip injury to an Approved Medical Specialist for determination of whole person impairment.