

WORKERS COMPENSATION COMMISSION

CERTIFICATE OF DETERMINATION

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

Matter Number: 1193/20
Applicant: Roberto Cirignano
Respondent: Bunzl Outsourcing Services Limited
Date of Determination: 10 June 2020
Citation: [2020] NSWCC 193

The Commission determines:

1. The applicant sustained a condition in his right hand/wrist consequent upon injury to the left hand/wrist on 26 June 2017.
2. The matter is remitted to the Registrar for referral to an Approved Medical Specialist for assessment of whole person impairment as a result of injury to the left wrist/hand on 26 June 2017 and condition in the right wrist/hand consequent upon that injury.
3. The documents to be referred to the Approved Medical Specialist are:
 - (a) Application to Resolve a Dispute and attachments;
 - (b) Reply and attachments;
 - (c) Application to Admit Late Documents dated 15 May 2020 and attachments;
 - (d) Application to Admit Late Documents dated 19 May 2020 and attachments, and
 - (e) this Certificate of Determination and Statement of Reasons.
4. This matter is not suitable for video assessment by an Approved Medical Specialist.

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

Brett Batchelor
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 BRETT BATCHELOR, ARBITRATOR, WORKERS COMPENSATION COMMISSION.

A Reynolds

Antony Reynolds
Senior Dispute Services Officer
As delegate of the Registrar



STATEMENT OF REASONS

BACKGROUND

1. Roberto Cirignano (the applicant/Mr Cirignano) claims lump sum compensation pursuant to s 66 of the *Workers Compensation Act 1987* (the 1987 Act) as a result of injury to his left upper extremity (wrist/hand) arising out of or in the course of his employment as a storeman and picker/packer with Bunzl Outsourcing Services Limited (the respondent) on 22 June 2017. This injury is not disputed, although the respondent says it occurred on 26 June 2017. Nothing turns on this discrepancy in dates.
2. The applicant also claims that he suffered a condition in his right upper extremity (wrist/hand) consequent upon the injury to his left upper extremity. This condition is disputed by the respondent.
3. The applicant's lump sum claim is for compensation for 13% whole person impairment (WPI) in respect of injury to the left and right upper extremities assessed by Dr W G D Patrick, an independent medical examiner, who saw Mr Cirignano on 18 September 2018 at the request of his solicitor and produced a report dated 17 January 2019¹.
4. Following the injury in June 2017 the applicant came under the care of his general practitioner, Dr Aung Kyaw, who on 4 August 2017 arranged a CT scan of the left wrist and hand on 14 July 2017. This showed no evidence of a healing fracture at the first metacarpal of proximal phalanx. Dr Kyaw then referred Mr Cirignano to Dr Christopher Scott, hand surgeon who opined that the history given by the applicant was consistent with a traction injury to the medial nerve rather than a specific wrist injury. He recommended an ultrasound of the carpal tunnel, specifically looking for evidence of compression of the median nerve and also a cortisone injection into the carpal tunnel as a diagnostic test, looking for any coexistent carpal tunnel syndrome.
5. The applicant returned to work on restricted duties and received treatment from an occupational therapist who recommended a gradual increase in his work duties while still wearing a brace on his left wrist.
6. Dr Scott carried out a left carpal tunnel release on 13 November 2017, and next saw the applicant on 9 January 2018 when he was complaining of numbness affecting the left ring and little fingers at night and had clinical findings consistent with an early and relatively mild cubital tunnel syndrome. Dr Scott recommended that the applicant continue to use the night splint and gel pad which had been provided by the hand therapist to treat this condition. The doctor also noted non-specific pain in the right wrist, which he attributed to overuse. He chose not to investigate this but encouraged the applicant to increase use of his left hand.
7. Dr Scott last consulted with the applicant on 11 April 2018 when he reported no further problems with his left hand but gave a history of experiencing increasing discomfort and stiffness in his right wrist and numbness affecting the ulnar three fingers of the right hand. On examination, Dr Scott noted that the applicant had normal sensation to the right hand, with no positive clinical findings of either carpal tunnel syndrome or cubital tunnel syndrome. Nevertheless Dr Scott's clinical diagnosis was of cubital tunnel syndrome for which he recommended formal physiotherapy.

¹ Application to Resolve a Dispute (the Application) p 13.

8. Dr Scott subsequently reported to both the applicant's solicitor and the respondent's solicitor that he was not of the opinion that compensatory overuse of the applicant's right hand is a contributing factor to the development of the right cubital tunnel syndrome, and that such syndrome was not caused by overuse. This opinion was in contrast with the opinion of Dr Patrick that Mr Cirignano had sustained significant work related injuries to the left wrist/hand with consequential injury and limitation with functional use of the right wrist/hand.

ISSUES FOR DETERMINATION

9. The parties agree that the only issue remaining in dispute is whether the applicant sustained a condition or injury in his right upper extremity (wrist/hand) consequent upon the undisputed injury to the left upper extremity (wrist/hand) on 26 June 2017².

PROCEDURE BEFORE THE COMMISSION

10. The parties attended a hearing conducted via telephone conference on 25 May 2020. 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.
11. Mr T Baker of counsel attended on behalf of the applicant briefed by Mr E Griffith. The applicant attended on a separate line. Ms L Goodman of counsel attended on behalf of the respondent briefed by Ms C Cook. A representative of iCare also attended on a separate line.

EVIDENCE

Documentary evidence

12. The following documents were in evidence before the Commission and taken into account in making this determination:
- (a) the Application and attached documents;
 - (b) Reply and attached documents;
 - (c) Application to Admit Late Documents dated 15 May 2020 (AALD 15 May 2020) lodged by the applicant with the following attachments:
 - (i) clinical notes Dr C Scott;
 - (ii) clinical notes Dr A Kyaw;
 - (iii) report of left wrist ultrasound of Dr M Waterland dated 21 August 2017.
 - (d) Application to Admit Late Documents dated 19 May 2020 (AALD 19 May 2020) with the following attachments:
 - (i) reports of Jessica Salmon, occupational therapist, dated 13 September 2017 and 4 January 2018;

² Correct date of injury in Incident Report Reply p 3.

- (ii) notice pursuant to s 74 of the *Workplace Injury Management and Workers Compensation Act 1998* (the 1998 Act) dated 23 April 2018;
- (iii) report dated 4 June 2019 Dr C Scott to Evan P Griffith Firths – The Compensation Lawyers;
- (iv) email dated 30 March 2020 Turks Legal to Evan Griffith serving s 78 [sic, s 74] notice issued by Allianz (the respondent's insurer) dated 23 April 2018;
- (v) report dated 21 April 2010 Dr C Scott to Craig Bell, Turks Legal;
- (vi) email dated 9 May 2020 Turks Legal to Evan Griffith serving report of Dr C Scott dated 21 April 2020.

Oral evidence

13. There was no application to adduce oral evidence of to cross-examine the applicant.

SUBMISSIONS

14. The submission of the parties are recorded on the Transcript of the hearing on 25 May 2020 (T), a copy of which can be obtained on request. I will not repeat them in full, but in summary they are as follows. The page references in this Statement of Reasons are to those in the Commission's electronic files, which differ from the page references in the paper files referred to by counsel in their submissions.

Applicant

15. The applicant relies on the evidence in his statement dated 21 February 2020³ and compares that evidence with the contemporaneous medical records of the treating practitioners. The applicant notes that, from the report of Dr Scott dated 4 September 2017 when the doctor reviewed the ultrasound of the left wrist dated 21 August 2017, that he was wearing a crepe bandage on his wrist and was referred to Cathy Merry for a more formal wrist brace or elasticized wrist strap. At the time he was on current work restrictions, but Dr Scott thought it would be reasonable to escalate his duties if he had good relief after the cortisone injection.
16. Dr Scott referred the applicant to Jessica Salmon, occupational therapist, who reported to Dr Scott on 13 September 2017⁴. The applicant notes that Ms Salmon saw him on 11 September 2017, one day after a cortisone injection into the left wrist and recommended continued wearing of the greenace brace for heavier tasks until the next review with Dr Scott in early October. Her plan was to wean Mr Cirignano from the brace pending his symptoms.
17. The applicant traces the history of his treatment with reference to the records of Dr Scott, namely, the consultation with the doctor on 9 October 2017 and subsequent surgery on 13 November 2017, a left open carpal tunnel release and cortisone injection into the FCR sheath⁵. At the consultation with Dr Scott on 28 November 2017⁶ the doctor notes the outcome of the surgery, recommends further treatment and also that Mr Cirignano continue on office duties only. The applicant emphasises Dr Scott's findings on review on 9 January 2018, nine weeks following surgery. The doctor recommends continued use of the

³ Application p 2.

⁴ Application p 30.

⁵ Reply pp 9-10.

⁶ Reply p12.

night splint and gel pad already provided by the therapist and notes a few episodes of numbness affecting the ulnar aspect of the left hand. He also notes a tender lump in the left palm which he attributes to a very early Dupuytren's nodule or potentially a flexor sheath ganglion, both of which did not warrant further investigation or treatment at that stage. What is significant about Dr Scott's findings on this date, according to the applicant, is that he recommends increased use of the left hand and observes that the applicant has noticed some pain in the right wrist pain, almost certainly as a result of overuse. A trial of pre-injury duties is recommended.

18. The applicant submits that what is extraordinary about this consultation is that at that stage he is obviously not using his left hand normally, has developed symptoms in his right hand due to overuse and is sent back for a trial of full pre-injury duties with a review in six weeks.
19. Thereafter, the applicant submits that Dr Scott is underwhelmed by his failure to attend a number of appointments which had to be rescheduled. In the report dated 14 March 2018⁷ attended by the rehab provider Rachel, but not the applicant, Dr Scott notes that it was the third appointment in a row that Mr Cirignano had missed or rescheduled. Crucially however the doctor notes he gathered that the applicant had increasing pain in his right wrist and that a second WorkCover claim had been lodged, with a cortisone injection already having been administered to the right wrist. Dr Scott also reiterates that he did not perform a formal examination of the right wrist in January as the symptoms appeared quite mild. Dr Scott notes that if the applicant did wish to see him about the right wrist, he would require a new referral and approval from his insurer, and that if he missed an appointment that was made, he would not be prepared to make any further appointments to see the applicant.
20. The applicant submits that when Dr Scott sent him back to full duties in January it was probably an error of judgement because of an increment in the symptomatology. This is confirmed by the fact that when he developed the symptoms in the right wrist, he consulted his general practitioner, Dr Kyaw, who arranged for the administration of a cortisone injection into his right wrist, just as he did after the first injury to the left wrist. The applicant emphasises that Dr Scott says in his report dated 14 March 2018⁸ that he did not have an opportunity to investigate or treat the right wrist and makes no comment about the diagnosis or appropriate return to work plan.
21. In summary, the applicant submits that his return to work made his left wrist worse as a direct consequence of attempting to perform normal work when he did not have a normal left wrist and had established symptoms in his right wrist.
22. Dr Kyaw referred the applicant back to see Dr Scott on 20 March 2018 in respect of "the right wrist injury"⁹, noting by Mr Cirignano complained of the same pain as in the left wrist of which he was aware for the previous work cover injury. Dr Scott's report dated 11 April 2018¹⁰ sets out the diagnosis and treatment of the right wrist condition, with the doctor noting approval for the applicant to try physiotherapy and seeking approval from the insurer. Dr Scott also expresses no objection to the applicant performing all of his normal duties as a taxi driver.
23. The applicant submits that it was the problems with the pain and numbness in both hands that caused him to cease work with the respondent in about March 2018 and take up taxi driving, and contrasts this work with the more arduous duties that the applicant was attempting as a picker/packer with the respondent..

⁷ Reply p 14.

⁸ Reply p 14.

⁹ Reply p 19.

¹⁰ Reply p 15.

24. The applicant relies on the certificates of capacity in evidence issued by Dr Kyaw dated from 10 July 2017¹¹ to 12 April 2018¹², noting that the first mention of the right wrist is in the certificate dated 27 February 2018 and that thereafter it is continually listed in the certificates of capacity. The date of the (right wrist) injury noted on these certificates, 19 January 2018, is according to the applicant consistent with the complaint of right wrist pain to Dr Scott and with his evidence.
25. The applicant submits that the history recorded by Dr W G D Patrick in his report dated 17 January 2019¹³, and that the opinion of that independent medical examiner should be accepted, that is, that he suffered a condition in his dominant right hand and wrist as a consequence of overuse due to the undisputed injury to the left hand and wrist. The applicant also submits that it is a matter for the Approved Medical Specialist (AMS) to determine the nature of the injury/condition in the right wrist/hand and the degree of WPI attributable to the condition in that wrist caused by overuse.
26. The applicant submits that the opinion of Dr R Breit, who examined him on 11 March 2019 at the request of the respondent's insurer and reported on 15 March 2019¹⁴ is of little assistance as Dr Breit did not accept that Mr Cirignano suffered a work related injury to the left wrist and made no diagnosis of the right wrist.

Respondent

27. The respondent takes issue with the applicant's statement evidence in so far as it suggests at [8]-[9] of his statement dated 21 February 2020 that the right wrist pain came on before the carpal tunnel surgery on the left wrist in November 2017. There is no corroborative evidence to support that this is the case. This (which is incorrect according to the respondent) is repeated in the history recorded by Dr Patrick in his report dated 17 January 2019.
28. The respondent also notes that the applicant is right handed and that evidence of exactly what activities he did with his right hand because of the injury to the left hand, such as to bring on the right hand symptoms, is absent. This point is also made by Dr Breit who notes that a right handed person tends to use that hand more and that therefore the contention that the applicant suffers overuse in that hand cannot be accepted.
29. Similarly, the applicant did not relate to Dr Patrick the activities that he carried out with his right hand such as to cause overuse, and therefore no foundation is laid for that doctor's opinion.
30. The respondent submits that the applicant did not see his treating general practitioner, Dr Kyaw, with complaints of right wrist pain from about March 2018 until November 2019¹⁵, and that such latter appointment (which was in fact on 21 November 2019) was at the request of his solicitors. During this time, the applicant saw his doctors (noting he saw other practitioners in the same practice) for a number of other complaints not related to his wrist. The respondent relies on the clinical notes of the general practitioner to substantiate this submission, highlighting also that there is no record therein of any complaint of right wrist pain before the left wrist surgery in November 2017.
31. The respondent submits that the claim in respect of the right wrist is not a 'nature and conditions' type claim of injury, but one relying on a frank injury to the left wrist on 26 June 2017. Therefore the reference in the report of Dr Kyaw dated 29 November 2019 of the aggravation of wrist symptoms with repetitive and wrist movements does not assist the

¹¹ Reply p 21.

¹² Reply p 71.

¹³ Application p 13.

¹⁴ Reply p 4.

¹⁵ See report dated 29 November 2019 by Dr Kyaw, Application p 21.

applicant in the presentation of his case in respect of the right wrist. The respondent also notes from this report that Dr Kyaw refers to the applicant starting to drive a taxi and that the left hand had no significant pain with reasonable function, and that a final certificate as to fitness for pre-injury duties was issued in March 2018. The respondent submits that there is no reference by Dr Kyaw to the right wrist in the report of 29 November 2019, and that it is the symptoms in the left wrist that the doctor says are being aggravated by driving.

32. The respondent relies on the opinion of Dr Scott expressed in his report to the respondent's solicitor dated 21 April 2019 that he is not of the opinion that the compensatory overuse of the applicant's right hand is a contributing factor to his right cubital tunnel syndrome, nor is he of the opinion that such syndrome was caused by overuse. Dr Scott opines that the cubital tunnel syndrome in both the left hand and right hand is of a degenerative nature.
33. The respondent submits that the applicant is not able to establish the chain of causation required to show that he suffered a condition in his left wrist consequent upon the injury to his left wrist because there is nothing in the evidence to say what the applicant would ordinarily have done with his left non-dominant arm. All the applicant can show is some right wrist pain when he goes back to work and the right wrist becomes symptomatic. This injury to the right wrist has been lodged as a separate claim.
34. The respondent notes that when Dr Scott examined the applicant in April 2018, the doctor told Mr Cirignano that the numbness he described in his right hand was most likely cubital tunnel syndrome, although it was likely that he had a component of carpal tunnel syndrome.
35. In short, the respondent submits that, based on what Dr Scott says, there is a history of increasing symptoms in the applicant's right wrist once he goes back to work, which are not work related, or related to the left wrist injury.

Applicant in response

36. The applicant highlights a number of entries in the clinical notes of Dr Kyaw in which there is reference to wrist pain, to which he said reference had not been made by the respondent in submissions. He noted that there was no doubt that Dr Kyaw saw him in February 2018 complaining of right wrist pain, and that Dr Kyaw sent him off for an ultrasound guided cortisone injection into his right wrist on 1 March 2018¹⁶.
37. The applicant also makes the point that in the final report of Dr Kyaw dated 29 November 2019, he is expressing the opinion that Mr Cirignano will have ongoing symptoms and limitation of wrist function bilaterally as a result of the injury that happened on 22 [sic, 26] June 2017.
38. The applicant also re-emphasises what was Dr Scott's finding on 9 January 2018, that the applicant had symptoms in his right wrist which pre-existed his return to normal duties, that is, those symptoms arose before the applicant saw Dr Scott on that day.

FINDINGS AND REASONS

Causation of the right wrist condition

39. The applicant must establish that he suffered a condition in his right wrist consequent upon the injury to the left shoulder on 26 June 2017, that is, has the right wrist condition "resulted from" the left shoulder injury. This test should be applied using the principles set out by Kirby P in *Kooragang Cement Pty Ltd v Bates*¹⁷ at [462] namely:

¹⁶ Application p 32.

¹⁷ (1994) 35 NSWLR 452; 10 NSWCCR 796 (*Kooragang*).

“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”.

40. At [463]-[464] Kirby P said:

“...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... is a question of fact to be determined on the basis of the evidence, including, where applicable, expert opinions”.

41. It is not necessary for the applicant to establish that he suffered an “injury” to the right wrist within the meaning of that term in s 4 of the 1987 Act, only that the symptoms and restrictions in his right wrist resulted from his left wrist injury¹⁸. In this case the applicant submits that it is a matter for the AMS to determine the nature of the condition in the right wrist that resulted from the left wrist injury. This submission will be addressed hereunder.
42. There is no dispute that the applicant reported symptoms in his right wrist to Dr Scott on 9 January 2018. The doctor described them as “...fairly non-specific right wrist pain...” and was of the opinion that “...this was most likely related to overuse, as he was still recovering from his surgery.”¹⁹ He expressed the same opinion in a report dated 4 June 2019 to the applicant’s solicitors²⁰. Dr Scott chose not to investigate this further at the time, but rather encouraged the applicant to increase the use of his left hand. At that consultation Mr Cirignano was complaining of numbness affecting the left ring and little fingers at night and had clinical findings consistent with an early and relatively mild cubital tunnel syndrome. The doctor noted that the hand therapist had already provided the applicant with a night splint and elbow gel pad to treat this and recommended continued use of these.
43. I accept the applicant’s submission that he was at that stage still obviously not using his left hand normally, had developed symptoms in his right hand due to overuse, and was sent back for a trial of full pre-injury duties with a review in six weeks.
44. However it is also clear, as submitted by the respondent, that this is the first occasion on which the applicant reported symptoms in his right wrist to a doctor. I accept the respondent’s submission that, if the applicant meant by what he said at [8] in his statement dated 21 February 2020 that he developed right wrist symptoms before the left wrist carpal tunnel surgery on 13 November 2017, that was not the case. At [9] in his statement the applicant says that after the carpal tunnel release, he felt a little improvement during the first two or three weeks, and that about a month later, he was suffering significant pain in his left wrist/hand. That would take the time frame for this pain to late December 2017 or early January 2018. He also says that he was suffering pain and limitation consequent upon overuse of his right dominant hand and wrist. That was corroborated by Dr Scott on 9 January 2018.
45. Later in the report dated 24 April 2019 Dr Scott says that the right wrist symptoms were most likely cubital tunnel syndrome, although there were no positive clinical findings when he examined Mr Cirignano. He did not think that the relatively mild wrist stiffness was significant and had made no diagnosis for this.

¹⁸ See Roche DP in *Moon v Conmah Pty Limited* [2009] NSWCCPD 134 (*Moon*) at [45]-[46].

¹⁹ See Dr Scott’s report the respondent’s solicitor dated 24 April 2019 p 13 AALD 19.05.20.

²⁰ AALD 19 May 2020 p 9.

46. In answer to the last question put to him in the report:

“In your view, is there any causal connection (such as opiates) between the worker’s injured left wrist and his right wrist symptoms? Please explain your answer.”

Dr Scott replied:

“I am not of the opinion that compensatory overuse of Roberto's right hand is a contributing factor to the development of his right cubital tunnel syndrome. When Roberto initially reported his fairly non-specific right wrist pain in January 2018, I was of the opinion that this was most likely related to overuse, as he was still recovering from his surgery. However, by the time he developed symptoms and signs of cubital tunnel syndrome in his right hand, he was back to normal use of his left hand and I am not of the opinion that the right cubital tunnel syndrome was caused by overuse. In addition, the fact that he also had signs and symptoms of mild cubital tunnel syndrome in the left hand is consistent with the degenerative nature of this condition.”

47. Dr Scott therefore seems to be saying that he made no diagnosis for the relatively mild right wrist stiffness he found on 9 January 2018, but that the compensatory overuse of the right hand, which he accepts occurred, is not a contributing factor to right cubital tunnel syndrome. At that time Dr Scott however found that the applicant had clinical findings consistent with an early and relatively mild cubital tunnel syndrome. He also found signs and symptoms of mild cubital tunnel syndrome in the left hand. He is of the opinion that the cubital tunnel syndrome in both the right and left hand is degenerative in nature.

48. Dr Scott says that he was back to normal use of his left hand when he developed signs and symptoms of cubital tunnel syndrome in his right hand. I do not accept that the applicant was back to normal use of his left hand when he developed signs and symptoms, including those of cubital tunnel syndrome as found by Dr Scott on 9 January 2018, in his right hand. These were reported to Dr Scott on 9 January 2018. Dr Kyaw in a consultation on 12 January 2018²¹ recorded the full duty trial recommended by Dr Scott as follows:

“Friday, January 12, 2018 1 :27:42 PM
Dr Aung Kyaw

History:
noted of DR SCOTT note
for full duty for 1 week trial
tolerating with pain”

This entry is confirmed by the WorkCover certificate of capacity issued by Dr Kyaw on 12 January 2018²² with reference to the left wrist pain noted therein as the diagnosis of work related injury/disease.

49. In the following consultation on 19 January 2018 Dr Kyaw recorded that the applicant was:

“to continue with full duties and review after seeing DR SCOTT right wrist pain now generalised pain no focal tenderness suggested for XRAY and review with results”

²¹ See clinical note of this date AALD 15.05.10 p 24.

²² Reply p 50.

50. Dr Kyaw continued to treat the applicant and arranged for him to undergo an ultrasound injection into his right wrist for right carpal tunnel syndrome on 1 March 2018. He referred Mr Cirignano back to Dr Scott on 20 March 2018²³ with a history of complaint of the same pain as in the left wrist as Dr Scott was aware with the previous work cover injury, and that notwithstanding the cortisone injection into the median nerve, the applicant experienced persisting pain. The fact that that applicant no longer worked for the respondent was also noted. The applicant confirms in his statement that he ceased working for the respondent in March 2018. He says that he had no alternative but to cease this work.
51. In accordance with that referral Dr Scott saw the applicant again on 11 April 2018. In the report dated 21 April 2018 he says that when he examined the applicant on 11 April 2018, he had normal sensation in the right hand, with no positive clinical findings of either carpal tunnel syndrome or cubital tunnel syndrome. Nonetheless, Dr Scott's clinical diagnosis was of cubital tunnel syndrome, and he recommended physiotherapy for this.
52. Dr Kyaw in his report dated 29 November 2019 to the applicant's solicitors noted his review of the applicant on that day. He said that, with reference to the left hand injury:
- “During the recovery period Mr Cirignano overuse the right hand to compensate the injured left wrist and started with right wrist pain which is clinically resemble the same pain as the left wrist.” [sic]
53. In that report Dr Kyaw said, with apparent reference to the left wrist, that the applicant still had signs and symptoms consistent with carpal tunnel syndrome. He also said that Mr Cirignano will have ongoing symptoms and have limitation on wrist function bilaterally as a result of the injury that happened on 22 June 2017.
54. In my view and taking after a commonsense review of the evidence I have summarised above, the applicant has suffered a condition in his right wrist/hand consequent upon the undisputed injury to the left wrist/hand on 26 June 2017. This finding is in accordance with the evidence of the applicant, his treating general practitioner Dr Kyaw who treated him throughout the time from when he first suffered his left wrist injury, and based on the acceptance by Dr Scott on 9 January 2018 that the applicant did have symptoms in his right wrist which he described as non-specific and attributed to overuse. Dr Scott chose not to investigate those symptoms and encouraged Mr Cirignano to increase the use of his left hand with a trial of return to normal duties. The applicant was not able to do this and was obliged to leave the respondent's employ in early March and take up a less arduous occupation (so far as use of his hands and wrists was concerned) of taxi driving. He continued to receive treatment during this time from Dr Kyaw.
55. This finding is notwithstanding the respondent's submission, and Dr Breit's opinion, that as the applicant is right hand dominant, he is more likely to use his right hand than his left and therefore any overuse of that hand has not been established. In my view the evidence does not support such a finding. Further Dr Breit's opinion in his report dated 15 March 2019²⁴ must be considered against the background that he was of the opinion that the applicant did not sustain an injury to either the ulnar or the median nerve of the left hand on 26 June 2017. He said that Mr Cirignano had a very minor extension type injury on the left side with a claim of volar pain and no evidence of carpal tunnel syndrome. He said that narrowing on ultrasound does not equal symptomatology or abnormal electrical physiology. Furthermore he said that the symptoms presented to him were on the ulnar side and there had been some postulate that the applicant may also have irritated the ulnar nerve.

²³ Reply p 19.

²⁴ Reply p 4.

Referral to AMS

56. As to the nature of the condition in the right wrist/hand that should be referred to an AMS for assessment, the applicant submits that it is a matter for the AMS to determine the nature of the compensable condition and the resulting WPI in the right upper extremity²⁵. The respondent did not make a submission on this point.
57. Dr Scott chose not to investigate the rather non-specific pain in the right wrist that the applicant reported to him on 9 January 2018, and which he attributed to overuse. He said at that time that Mr Cirignano had developed symptoms of cubital tunnel syndrome which he did not attribute to the compensatory overuse of the right hand.
58. The treatment, including surgery, that the applicant received for his left wrist/hand injury was for carpal tunnel syndrome. Dr Kyaw also treated the right wrist/hand condition as carpal tunnel syndrome, and then referred the applicant back to Dr Scott.
59. Dr Patrick examined the applicant on 18 September 2018 and reported on that examination on 17 January 2019. He found that Mr Cirignano had ongoing feelings of numbness in both hands, with feelings of pain both in the palms and also dorsally, that sleep was disturbed due to the frequent sensations of pins and needles in the hands (more marked towards the thumb side of the hands – radial) and pain in the hands and bases of the thumbs. His opinion was that the applicant had suffered significant work related injuries to left wrist/hand and with a consequential injury and limitation with functional use of right hand/wrist.
60. Deputy President Roche in *Moon* at [45] said, with reference to a condition in the left shoulder claimed to have been in consequence of a right shoulder injury:
- “It is therefore not necessary for Mr Moon to establish that he suffered an ‘injury’ to his left shoulder within the meaning of that term in section 4 of the 1987 Act. All he has to establish is that the symptoms and restrictions in his left shoulder have resulted from his right shoulder injury.”
61. It will be a matter for the AMS to determine the degree of WPI in the right wrist/hand resulting from the condition therein as a consequence of the injury to the left wrist/hand on 26 June 2017.

SUMMARY

62. The applicant sustained a condition in his right wrist/hand consequent upon injury to the left wrist/hand on 26 June 2017.
63. The matter is remitted to the Registrar for referral to an AMS for assessment of WPI as a result of injury to the left wrist/hand on 26 June 2017 and condition in the right wrist/hand consequent upon that injury.
64. The documents to be referred to the AMS are:
- (a) the Application and attachments;
 - (b) Reply and attachments;
 - (c) Application to Admit Late Documents dated 15 May 2020 and attachments;
 - (d) Application to Admit Late Documents dated 19 May 2020 and attachments, and
 - (e) this Certificate of Determination and Statement of Reasons.
65. This matter is not suitable for video assessment by an AMS.

²⁵ T 31.20 – 32.20.

