WORKERS COMPENSATION COMMISSION

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

Matter Number:	**M1- 205/19**
Appellant:	**Shahran Fard**
Respondent:	**Sash Transport Pty Ltd**
Date of Decision:	**15 August 2019**
Citation:	**[2019] NSWWCCMA 114**

Appeal Panel:	
Arbitrator:	**Carolyn Rimmer**
Approved Medical Specialist:	**Dr Mark Burns**
Approved Medical Specialist:	**Dr Tom Mastroianni**

BACKGROUND TO THE APPLICATION TO APPEAL

1. On 14 March 2019 Shahran Fard (Mr Fard) lodged an Application to Appeal Against the Decision of Approved Medical Specialist. The medical dispute was assessed by Dr Tim Anderson, an Approved Medical Specialist (AMS), who issued a Medical Assessment Certificate (MAC) on 19 March 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 Workers Compensation Medical Dispute Assessment Guidelines set out the practice and procedure in relation to the medical appeal process under s 328 of the 1998 Act. An Appeal Panel determines its own procedures in accordance with the Workers compensation medical dispute assessment guidelines.

5. The assessment of permanent impairment is conducted in accordance with the *NSW Workers Compensation Guidelines for the Evaluation of Permanent Impairment, 4th* Ed 1 April 2016 (the Guidelines) and the *American Medical Association Guides to the Evaluation of Permanent Impairment,* 5th Ed (AMA 5).

RELEVANT FACTUAL BACKGROUND

6. Mr Fard sustained an injury in the course of his employment when a cable drum weighing about 700 kilograms rolled from a truck and onto him on 17 March 2017. Mr Fard suffered an injury to the left lower extremity and a consequential condition in the lumbar spine.

7. Proceedings were commenced in the Commission on 15 January 2019. Mr Fard made a claim for lump sum compensation.

8. The matter was referred to the AMS, Dr Anderson, in the Referral for Assessment of Permanent Impairment to Approved Medical Specialist dated 8 February 2019 for assessment of whole person impairment (WPI) of the left lower extremity, lumbar spine and scarring (TEMSKI) as a result of the injury on 17 March 2017.

9. The AMS examined Mr Fard on 21 February 2019. He assessed 7% of the lumbar spine and 1% for scarring as a result of the injury on 17 March 2017. The AMS determined that the left lower extremity was "not assessible". The assessments made by the AMS resulted in a combined total of 8% WPI as a result of the injury on 17 March 2017.

PRELIMINARY REVIEW

10. 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.

11. The appellant did not request that he be re-examined by an AMS, who is a member of the Appeal Panel.

12. As a result of that preliminary review, the Appeal Panel determined that there was an error in the MAC and it was necessary for Mr Fard to undergo a further medical examination because there was insufficient evidence by way of medical reports and clinical investigations in relation to assessment of the left lower extremity and scarring on which to make a determination.

EVIDENCE

Documentary 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.

Further medical examination

14. Dr Tom Mastroianni of the Appeal Panel conducted an examination of Mr Fard on 18 July 2019 and reported to the Appeal Panel.

Medical Assessment Certificate

15. The parts of the medical certificate given by the AMS that are relevant to the appeal are set out, where relevant, in the body of this decision.

SUBMISSIONS

16. Both parties made written submissions. They are not repeated in full but have been considered by the Appeal Panel.

17. The appellant's submissions include the following:

    - The AMS did not provide an assessment of WPI referable to the Mr Fard's left lower extremity on the basis that the left lower extremity was "not assessible".

- The left lower extremity had been referred for assessment. By failing to assess WPI resulting from the injury to the left lower extremity the AMS applied incorrect criteria. Consistent with *Bukorovic v The Registrar of the Workers Compensation Commission* [2010] NSWSC 507(*Bukorovic)* at [53] and [54], once the AMS determined the condition affecting Mr Fard's left lower extremity had stabilised, in order to comply with s 325, "he had to make a whole person assessment as a percentage." In *Bukorovic*, the AMS had, as here, not assessed WPI because of inconsistencies the AMS decided were present during examination. The Appeal Panel determined that regardless of perceived inconsistencies, it was an error not to assess WPI in the referred body part.

- While it is open to an AMS to modify an assessment of WPI, if in the AMS's exercise of clinical skill and judgment it is warranted and relevant inconsistencies are found, an AMS cannot merely opine that inconsistencies render the relevant body part: "Not assessible".

- The MAC contains a demonstrable error in that the AMS did not provide sufficient reasons for his conclusions. The AMS assessed scarring at 1% WPI. The AMS did not provide adequate reasons for reaching that conclusion as required by Clause 14.8 of the Guidelines and s 325 of the 1998 Act.

- The AMS did not indicate why he assessed the WPI at 1% merely noting that Mr Fard:

  > "has extensive scarring over the postero-medial part of the left knee which is ragged and naturally causes concern. This is addressed on page 74 of the SIRA Guidelines, Table 14.1. With these features, he is most closely in the 1% WPI Category".

  The AMS then stated that he agreed with the assessment of Dr Lin.

- The AMS has not provided any explanation as to how he reached the conclusion that Mr Fard's scarring was 1% WPI. While the reasons need not be extensive or need to provide a detailed explanation of the criteria applied by medical specialists in reaching a professional judgment, the reasons in this MAC do not provide any explanation.

18. The respondent's submissions include the following:

- Paragraph 1.36 of the Guidelines provides:

  > "AMA5 (p 19) states: 'Consistency tests are designed to ensure reproducibility and greater accuracy. These measurements, such as one that checks the individual's range of motion are good but imperfect indicators of people's efforts. The assessor must use their entire range of clinical skill and judgment when assessing whether or not the measurements or test results are plausible and consistent with the impairment being evaluated. If, in spite of an observation or test result, the medical evidence appears insufficient to verify that an impairment of a certain magnitude exists, the assessor may modify the impairment rating accordingly and then describe and explain the reason for the modification in writing.' This paragraph applies to inconsistent presentation only."

- In *Vitaz v Westform* (NSW) Pty Ltd [2011] NSWCA 254 Basten JA observed that:

> "An Approved Medical Specialist is entitled to reach conclusions, no doubt partly on an intuitive basis, and no reasons are required in circumstances where the alternative conclusion is not presented by the evidence and is not shown to be necessarily available."

- This is an expression of clinical judgment and the AMS's conclusions in this regard were no doubt reached "partly on an intuitive basis" and it was determined that the WPI with respect to the left lower extremity was not assessible, notwithstanding paragraph 1.32 of the Guidelines. These are conclusions which the AMS was entitled to reach and the appellant should not be allowed to "cavil" at matters of clinical judgment.

- The clinical judgment of the AMS often requires them to take a "holistic approach". While the appellant seeks to "cavil" at one aspect of the AMS's clinical judgment, the appellant overlooks areas in which the AMS applied his clinical judgment in favour of the appellant. For example, no deduction was made under s 323 of the 1998 Act relating to the lumbar spine, despite there being evidence of pre-existing degenerative change and a CT scan of the lumbar spine dated 19 April 2017.

- No reasons were given for this oversight. A one-tenth deduction, at the very least should have been applied. If the appellant is successful and it is determined the appellant should be assessed by the Appeal Panel or that the MAC should be corrected a deduction should be made pursuant to s 323 of the 1998 Act.

- There was no application of incorrect criteria in respect of the left lower extremity.

- If the Appeal Panel accepts that the AMS has applied incorrect criteria, the MAP should have regard to the following comments made by the AMS:

  (a) At page 3 of the MAC the AMS was advised there had been no change to hair growth of the limb and although Mr Fard thought there had been a change in the rate of growth of nails he was unable to describe whether this was greater or slower.

  (b) At page 5 of the MAC, the AMS noted that the legs were equivalent in length and in circumference at the thigh and calf. He expressed the view that "with such complete disuse of the left leg, I would have anticipated finding a reduction in circumferential measurements, but this does not exist". The AMS found it extremely difficult to examine the lower limbs. There was no movement at all of the ankle, foot or any of the toes. There were no adverse features identified with respect to nail or hair growth and no evidence of sweating. The AMS was unable to demonstrate any reflex activity at all in either lower limb.

(c) At page 6 of the MAC, the AMS noted that Mr Fard did not meet the necessary criteria for the diagnosis of Chronic Regional Pain Syndrome according to the Guidelines. The AMS gained the strong opinion that Mr Fard's current condition was generated by non-physical features noting the "findings of complete symmetry of the upper and lower leg musculature despite his contention that he can only move with crutches and cannot carry out any weight bearing…this is inconsistent with such a phenomenon."

- Based on the above findings by the AMS, the Appeal Panel should correct the error and determine that 0% WPI is appropriate in the circumstances.

- In respect of scarring, the AMS assessed 1% WPI which was in accordance with the assessment of the appellant's qualified doctor, Dr Min Fee Lai, in his report dated 28 August 2018.

- The appellant submitted that the AMS provided inadequate reasons for reaching his conclusion. There was no suggestion that the AMS did not address the various medical opinions expressed in the documents filed. The AMS considered the medical evidence, examined Mr Fard and provided reasons for the assessment of the scarring at page 7 of the MAC. The AMS properly undertook an assessment of Mr Fard's WPI in accordance with the Guidelines. While there was a requirement for the AMS to provide reasons for his conclusions, there was no requirement for him to provide an extensive or detailed explanation for his conclusions. The AMS provided sufficient and justifiable evidence to support his conclusions having undertaken a thorough examination. This was based on the evidence at hand and he formulated an opinion in agreement with Dr Lai. This does not constitute a demonstrable error.

- The AMS was able to make a well informed medical assessment in relation to scarring based on the medical evidence available on the day, including the assessment of Dr Lai and Mr Fard's presentation.

- The MAC should be confirmed. In the event that there is an application of incorrect criteria in relation to the left lower extremity, the MAP should correct that error and determine that a 0% WPI assessment is appropriate in the circumstances and/or there should be a deduction pursuant to s 323 of the 1998 Act in respect of the lumbar spine.

FINDINGS AND REASONS

19. 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.

20. In *Campbelltown City Council v Vegan* [2006] NSWCA 284 the Court of Appeal held that the Appeal Panel is obliged to give reasons. Where there are disputes of fact it may be necessary to refer to evidence or other material on which findings are based, but the extent to which this is necessary will vary from case to case. Where more than one conclusion is open, it will be necessary to explain why one conclusion is preferred. On the other hand, the reasons need not be extensive or provide a detailed explanation of the criteria applied by the medical professionals in reaching a professional judgement.

21. The role of the Medical Appeal Panel was considered by the Court of Appeal in the case of *Siddik v WorkCover Authority of NSW* [2008] NSWCA 116 (*Siddik*). The Court held that while prima facie the Appeal Panel is confined to the grounds the Registrar has let through the gateway, it can consider other grounds capable of coming within one or other of the section 327(3) heads, if it gives the parties an opportunity to be heard. An appeal by way of review may, depending upon the circumstances, involve either a hearing de novo or a rehearing. Such a flexible model assists the objectives of the legislation.

22. Section 327(2) was amended with the effect that while the appeal was to be by way of review, all appeals as at 1 February 2011 were limited to the ground(s) upon which the appeal was made. In *New South Wales Police Force v Registrar of the Workers Compensation Commission of New South Wales* [2013] SC 1792 Davies J considered that the form of the words used in s 328(2) of the 1998 Act being, 'the grounds of appeal on which the appeal is made' was intended to mean that the appeal is confined to those particular demonstrable errors identified by a party in its submissions.

23. In this matter, the Registrar has determined that he is satisfied that at least one of the grounds of appeal under s 327(3)(d) is made out, in relation to the AMS's assessment of the left lower extremity and scarring (TEMSKI).

24. The Panel reviewed the history recorded by the AMS, his findings on examination, and the reasons for his conclusions as well as the evidence referred to above.

25. Under "History relating to Injury" the AMS noted:

> "Mr Fard related that on 17/03/17, he had been loading a large cable drum onto the back of his articulated truck. The cable drum was empty and was made of wood. It weighed a bit less than a tonne. The normal procedure was that it would be loaded onto the back of his truck, stabilised by chocks on each side and then tied down, usually with webbing tie straps. On this occasion, the forklift driver disengaged from the drum before Mr Fard had time to place the stabilising chocks. The drum started moving and rolled of the end of his truck. Mr Fard ran and tried to get out of the way but unfortunately did not make it and apparently was hit by the drum which partially rolled over him. The major injury was to his left foot and to a lesser extent the posterior part of his left knee complex.
>
> (2) He has very little memory of this occasion. He was taken by ambulance to Royal North Shore Hospital and came under the initial care of Specialist Orthopaedic Surgeon, Dr Joe Isaacs.
>
> (3) It was identified that there had been a severe crush injury to his left foot. The radiological investigations demonstrated a multiplicity of fractures to the midfoot although there was relatively little displacement. On the following day, a surgical procedure was conducted with a lateral approach to irrigate and debride the area since the injury had been compound. Following dressing, the foot was maintained in a moon boot. He left hospital after about 8 days.
>
> His subsequent clinical management was conservative…"

26. Under "Present symptoms", the AMS noted:

> "(1) Low back pain.
>
> (2) Pain around the left knee.
>
> (3) Pain around the left foot.

(4) A colour change of the left foot to a blueish colour.

(5) Occasional swelling of the left foot.

(6) Any increase in physical activity makes the condition of the left foot more severe. It also feels subjectively colder.

(7) There has been no change to the hair growth of the limb although he feels that there has been a change in the rate of growth of his nails but was unable to describe whether this was greater or slower."

27. Under "Findings on Physical Examination" the AMS wrote:

"….

c. Lower Limbs. Mr Fard mobilised on crutches. His left leg was maintained with slight flexion of the knee, slight plantar flexion of the ankle and the leg slightly externally rotated. He would not take any weight bearing on the left leg at all.

d. The legs were equivalent in length and in circumference at thigh and calf. (With such complete disuse of the left leg, I would have anticipated finding a reduction in circumferential measurement, but this did not exist.)

e. There was a ragged scar on the postero-medial part of the left knee where there had been a soft tissue injury. This had healed although was ragged.

f. It was extremely difficult to effectively examine the lower limbs although I gained the impression that despite his condition, Mr Fard was trying to be co-operative. No specific features were identified with the hips. Movement of the left knee was from 10° of flexion through to 70° of flexion. No specific features were identified with the actual knee joint.

g. With the left ankle, there was absolutely no movement at all of the ankle, foot or any of the toes. Sensation to pin prick was grossly reduced in the left lower leg in a stocking distribution from the level of the mid knee distally. Nevertheless, with careful explanation to Mr Fard, I was able to gently palpate the left lower limb without causing discomfort. He described the left lower leg as being colder. It was slightly colder. He also described alteration of colour and some swelling. These features were minimal at this assessment.

h. No adverse features were identified with the nails or hair growth. Similarly, there was no evidence of sweating.

i. Reflexes were very gently assessed although I was unable to demonstrate any reflex activity at all in either lower limb.

j. The straight leg raise test was conducted in the sitting position on the edge of the couch. He was able to fully extend the right knee and almost fully extend the left knee without obvious discomfort. There was a lot of crepitus in the knees and rather ironically most of this was in the right knee."

28. Under “Summary” the AMS wrote:

> “(1) Mr Fard experienced a severe crush fracture to his left foot in mid-March 2017. A multiplicity of bones were affected although there was minimal displacement. The condition was initially managed by surgical irrigation, debridement and immobilisation in a moon boot. Unfortunately, he has developed a chronic pain condition of the left foot. This was described by Specialist Pain Management Physician, Dr Nathan Taylor, (who was caring for him) as Chronic Regional Pain Syndrome and was treated as such. So far, all of his clinical management has been conservative.
>
> (2) The situation has been extensively complicated by the incidental identification of a follicular lymphoma. This has been managed by the Haematology Department at Nepean Hospital. At the moment, he is in remission.
>
> (3) Further clinical management of his left lower limb condition has been extremely difficult and there has been no progress. He continues to have a chronic pain condition. Although from a practical point of view he has Chronic Regional Pain Syndrome, strictly from an assessment point of view, he does not meet the necessary criteria for the diagnosis of Chronic Regional Pain Syndrome according to the SIRA Guidelines.”

29. Under ‘Consistency of presentation” the AMS wrote;

> “Mr Fard was a friendly and pleasant gentleman. I gained the impression that he was trying to be helpful and co-operative although I also gained the strong impression that his current condition is generated by non-physical features.
>
> Brief comment has already been made to the findings of complete symmetry of the upper and lower leg muscularity despite his contention that he can only move with crutches and cannot carry out any weight bearing. With the greatest of respect, this is inconsistent with such a phenomenon.”

30. Under “Reasons for Assessment the AMS wrote:

> “Left Lower Extremity.
>
> (1) With Mr Fard’s presentation I am unable to accurately assess whole person impairment with the left lower extremity.
>
> (2) Lumbar spine 7%.
>
> (3) Scarring 1%.
>
> **b. An explanation of my calculations**
>
> (1) **Left Lower Extremity**. I have briefly advised that at this assessment, I was convinced that a significant component of Mr Fard’s left lower limb presentation was very much non-physical. There are inconsistencies with a complete absence of muscle wasting, yet a history of not being able to carry out any weight bearing at all with the left leg. Similarly, there was absolutely no movement at all of any component of the left leg from the ankle downwards. Again, this is a very inconsistent presentation.
>
> …

(3) **Scarring**. He has extensive scarring over the postero-medial part of the left knee which is ragged and naturally causes concern. This is addressed on page 74 of the SIRA Guidelines, Table 14.1. With these features, he is most closely in the 1% WPI category."

Assessment of the left lower extremity

31. The AMS did not provide an assessment of WPI in respect of Mr Fard's left lower extremity on the basis that the left lower extremity was "not assessible".

32. The appellant submitted that by failing to assess the left lower extremity resulting from the injury to the left lower extremity the AMS applied incorrect criteria and it was an error not to assess whole person impairment in respect of the referred body part.

33. The Appeal Panel considered that the failure to provide an assessment of WPI in respect of Mr Fard's left lower extremity on the basis that the left lower extremity was not assessible was a demonstrable error. The Appeal Panel agreed with approach taken in *Bukorovic* and agreed that once the AMS determined the condition affecting Mr Fard's left lower extremity had stabilised, in order to comply with s 325, "he had to make a whole person assessment as a percentage." Regardless of any perceived inconsistencies, it was an error not to assess WPI in the referred body part.

Assessment of scarring

34. The appellant submitted that the AMS assessed scarring at 1% WPI but did not provide adequate reasons for reaching that conclusion as required by Clause 14.8 of the Guidelines and s 325 of the 1998 Act.

35. The Appeal Panel accepted that the AMS merely noted that Mr Fard "has extensive scarring over the postero-medial part of the left knee which is ragged and naturally causes concern. This is addressed on page 74 of the SIRA Guidelines, Table 14.1. With these features, he is most closely in the 1% WPI Category". The AMS then stated that he agreed with the assessment of Dr Lin.

36. The Appeal Panel formed the view that the AMS did not provide adequate reasons as to how he reached the conclusion that Mr Fard's scarring was 1% WPI. The failure to provide adequate reasons was an error.

37. The Appeal Panel considered that a re-examination was necessary in order to properly assess the left lower extremity and including the scarring.

38. As noted above, Dr Mastroianni re-examined Mr Fard on 18 July 2019. Dr Mastroianni provided the following report.

> **"1. The workers medical history, where it differs from previous records**
>
> The Claimant confirms the history as per the previous records.
>
> **2. Additional history since the original Medical Assessment Certificate was performed**
>
> There is no additional history.
>
> **3. Findings on clinical examination**
>
> Mr Fard was accompanied by his wife. He walks with two crutches. He sat comfortably whilst relaying the history. He relays the history in a straight forward manner and there were no inconsistencies in the history or examination.

Mr Fard complains of constant back pain and left foot pain. Symptoms are aggravated by sitting and walking. When asked about the use of crutches he states that he uses crutches when he goes out but inside the house he can get around without crutches, although he at times holds on for support.

He states that with medication he has pain which he rates 3-4 on a visual analogue scale of 10. He says he is always on medication and he doesn't know what the pain would be without medication.

He states that the pain wakes him up at night. He states that symptoms are worse by the afternoon. He states the left leg swells if he sits for long periods. He usually keeps the leg elevated to minimize swelling. He states that when the leg swells it changes colour.

Mr Fard dresses and undresses without difficulty. When walking without the crutches he weight-bears on the heel. He walks with the leg externally rotated.

Examination of the back reveals tenderness in the lumbosacral spine and asymmetric loss of range of movement.

I assess DRE II of the lumbar spine, 7% WPI.

He gets on and off the couch without difficulty and is comfortable when supine.

Examination of the lower limbs reveals normal reflexes (knee, ankle and hamstring jerks), and normal sensation to light touch and sharp stimulus. Straight leg raise was normal. Nerve root tension signs are negative.

There is no swelling in the left foot. There is no discolouration and temperature is normal.

There were no vasomotor, sudomotor or trophic changes.
Mr. Fard does not meet the criteria of CRPS 1 or 2 (SIRA Guidelines 4TH Edition – 1 April 2016).

On measuring the lower limbs I found loss of muscle bulk in the left leg. There is 3/4cm of washing of the left thigh and 1.5cm of wasting in the left calf.

There is left knee patellofemoral crepitus and tenderness on patellofemoral compression. There is no crepitus or tenderness in the right patellofemoral joint.

The left mid-foot is tender but there is no tenderness in the ankle joint.

I was able to palpate the rest of the leg and there was no tenderness, and when testing for sensation both to light touch and sharp stimulus there was no hyperaesthesia.

Left hip movements and left knee movements were normal.

The left ankle was restricted with -10° extension and flexion to 20°. This equates to 7% lower extremity impairment for lack of extension and flexion (AMA 5, page 537, table 17-11).

The left hindfoot is restricted and there was 5° inversion and 0° eversion which equates to 5% and 2% lower extremity impairment respectively (AMA 5, page 537, table 17-12).

Chondromalacia patella equates to 5% lower extremity impairment (AMA5, page 544. Table 17-31)

The combined lower extremity impairment due to restricted ankle and hindfoot movement is 21%.

The combined hindfoot and ankle restriction of 21% lower extremity impairment combined with 5% lower extremity impairment for left knee chondromalacia patella gives 25% lower extremity impairment, which equates to 10% whole person impairment.

There is scarring in the left knee. He is conscious of the scar. The scar is paler than the surrounding skin. He is able to locate the scar. There are minimal trophic changes. The anatomical location of the scar is visible with usual summer clothing (shorts or bathers). There is no contour defect and there is negligible effect on ADLs. He needs no treatment for the scar. In my opinion he best fits the descriptors for 1% WPI.

4. Results of any additional investigations since the original Medical Assessment Certificate

Not Applicable."

39. The Appeal Panel has adopted the report and findings of Dr Mastroianni. The Appeal Panel noted that Dr Mastroianni found Mr Fard to be genuine and found that there were no inconsistencies. Dr Mastroianni found the same impairment for scarring and for the lumbar spine as assessed by the AMS.

40. Dr Mastroianni found that there was muscle wasting consistent with favouring the leg. He found no evidence of complex regional pain syndrome, but did find that Mr Fard had a painful foot and chronic pain in the mid-foot as a result of the multiple fractures.

41. The Panel therefore assessed 10%WPI for the left lower extremity, 7% for the lumbar spine and 1% for scarring. This results in a total combined assessment of 17% WPI.

42. The Appeal Panel noted that the respondent submitted that there should be a deduction pursuant to s 323 of the 1998 Act in respect of the lumbar spine. The respondent argued that there was evidence of pre-existing degenerative change, namely, a CT scan of the lumbar spine dated 19 April 2017. The Appeal Panel noted that no appeal had been filed by the respondent in respect of a deduction pursuant to s 323 of the 1998 Act in respect of a deduction pursuant to s 323 of the 1998 Act. However, the Appeal Panel reviewed the evidence.

43. The AMS had referred to the CT scan dated 17 April 2017 under details and dates of special investigations. The AMS then wrote at Part 11 of the MAC:

> "Although there is evidence of pre-existing degenerative change in the lumbar spine, in the history which Mr Fard gave and in his work record, although there may have been a previous time when there was a low back condition, this seems to have been a long time ago and more recently did not cause concern. This job is physically arduous, and he was able to manage it satisfactorily. I am therefore not persuaded that there is any justification for a deduction."

44. The Appeal Panel accepted the history given by Mr Fard to the AMS. The Appeal Panel considered that no deduction should be made under s 323 of the 1998 Act. The Appeal Panel agreed with the approach adopted by the AMS and was of the view that there was insufficient evidence that the pre-existing condition contributed to the impairment. In particular, the Appeal Panel noted that Mr Fard had been carrying out heavy physical work duties as a truck driver prior to the injury on 17 March 2017.

45. For these reasons, the Appeal Panel has determined that that the MAC issued on 1 March 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*.

G De Paz

Glicerio De Paz
Dispute Services Officer
As delegate of the Registrar

WORKERS COMPENSATION COMMISSION

APPEAL PANEL
MEDICAL ASSESSMENT CERTIFICATE

Injuries received after 1 January 2002

Matter Number: **205/19**
Applicant: **Shahran Fard**
Respondent: **Sash Transport 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 Tim Anderson 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**	**% WPI deductions pursuant to S323 for pre-existing injury, condition or abnormality**	**Sub-total/s % WPI (after any deductions in column 6)**
Left lower extremity	17/03/17	Chapter 3 Pages 13-23	Chapter 17 Pages 523 to 564	10%	Nil	10%
Lumbar spine	17/03/17	Chapter 4 Page 24-29	Chapter 15 Page 384 Table 15-3	7%	Nil	7%
Scarring	17/03/17	Chapter 14 Pages 73-74		1%	Nil	1%
Total % WPI (the Combined Table values of all sub-totals)					**17%**	

Carolyn Rimmer
Arbitrator

Dr Mark Burns
Approved Medical Specialist

Dr Tom Mastroianni

Approved Medical Specialist

15 August 2019

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.*

G De Paz

Glicerio De Paz
Dispute Services Officer
As delegate of the Registrar