

# WORKERS COMPENSATION COMMISSION

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

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<b>Matter Number:</b>	<b>M1-803/19</b>
<b>Appellant:</b>	<b>David Robert Batcheldor</b>
<b>Respondent:</b>	<b>GC Schmidt (Plant) Pty Ltd trading as Schmidt Quarries</b>
<b>Date of Decision:</b>	<b>1 October 2019</b>
<b>Date of Amended:</b>	<b>2 October 2019</b>
<b>Citation:</b>	<b>[2019] NSWCCMA 141</b>

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<b>Appeal Panel:</b>	
<b>Arbitrator:</b>	<b>Jane Peacock</b>
<b>Approved Medical Specialist:</b>	<b>Dr Brian Noll</b>
<b>Approved Medical Specialist:</b>	<b>Dr Margaret Gibson</b>

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### BACKGROUND TO THE APPLICATION TO APPEAL

1. On 4 July 2019 Mr David Batcheldor lodged an Application to Appeal Against the Decision of Approved Medical Specialist. The medical dispute was assessed by Dr Richard Crane, an Approved Medical Specialist (AMS), who issued a Medical Assessment Certificate (MAC) on 6 June 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, 4<sup>th</sup> ed* 1 April 2016 (the Guidelines) and the *American Medical Association Guides to the Evaluation of Permanent Impairment, 5<sup>th</sup> ed* (AMA 5).

### PRELIMINARY REVIEW

6. The Appeal Panel conducted a preliminary review of the original medical assessment in the absence of the parties and in accordance with the Workers compensation medical dispute assessment guidelines.

As a result of that preliminary review, the Appeal Panel determined that it was not necessary for the worker to undergo a further medical examination.

## EVIDENCE

### Documentary evidence

7. The Appeal Panel has before it all the documents that were sent to the AMS for the original medical assessment and has taken them into account in making this determination.

### Medical Assessment Certificate

8. 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

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

## FINDINGS AND REASONS

10. 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.
11. 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.
12. The matter was referred by the Registrar to the AMS as follows:

“The following matters have been referred for assessment (s 319 of the 1998 Act):

- **Date of injury:** 15 June 2016
- **Body parts/systems referred:**
  - Right upper extremity
  - Scarring - TEMSKI
- **Method of assessment:** Whole person impairment”

13. The AMS issued a MAC as follows:

Body Part or system	Date of Injury	Chapter, page and paragraph number in NSW workers compensation guidelines	Chapter, page, paragraph, figure and table numbers in AMA5 Guides 15 June 2016	% WPI	WPI deductions pursuant to S323 for pre-existing injury, condition or abnormality (expressed as a fraction)	Sub-total/s % WPI (after any deductions in column 6)
1. Right upper extremity	15 June 2016	Chapter 2 Pages 10-12	Chapter 16 Pages 433-521	19%	1/10	17% rounded

2. Scarring	15 June 2016	Chapter 14 Table 14.1 Pages 73-74		1%	1/10	1% rounded
<b>Total % WPI (the Combined Table values of all sub-totals)</b>					<b>18%</b>	

14. The worker appealed.
15. In summary, the appellant made submissions as follows:
- (a) The AMS erroneously made two deductions for a pre-existing condition.
  - (b) The AMS erred with regard to the assessment of impairment for scarring.
16. In summary, the respondent made submissions as follows:
- (a) The Respondent acknowledged the Appellant's first ground of appeal (that the AMS made two deductions) and 'neither opposes nor consents to the ground'.
  - (b) With regard to the scarring, the Respondent submitted that the AMS's assessment of impairment should be confirmed.
17. The Panel notes that the AMS's conclusion that the Upper Extremity Impairment (UEI) results in 35% impairment has not been appealed. Nor has the AMS's assessment that there should be a 1/10 deduction for the pre-existing condition been appealed.
18. The AMS erred because he effectively made the deduction under section 323 twice. He took one-tenth off his assessment of 35% Upper Extremity Impairment, then made the conversion to WPI, added the impairment for scarring and then made another one-tenth deduction. The AMS set out his reasoning as follows:
- "Within the range of 10% to 39% upper extremity impairment, I believe it would be appropriate to select a figure of 35% from which I believe it would be appropriate to deduct one-tenth for the pre-existing situation of the screws from the clavicular fracture plating abutting the right subclavian vein.
- This would lead to a resultant 31.5% upper extremity impairment, rounding to 32%, which converts to 19% whole person impairment.
- As concerns scarring, the claimant is conscious of the scars in both the right clavicular area and left lower extremity. There are some colour contrasts of the scar with surrounding skin and the claimant is able to easily locate the scars. There are minimal trophic changes but no suture marks are visible. The anatomic location is readily visible. The scars have a minor contour defect and there is some interference with activities of daily living but no treatment is required and there is no adherence.
- On balance, I believe the best fit for the scarring assessment is 1% whole person impairment.
- The total whole person impairment is therefore calculated as 20% less 1/10 for pre-existing damage = 18%."
19. The Panel will correct the error made by the AMS in making the deduction twice.

20. The 35% upper extremity impairment, as found by the AMS and not complained about on appeal, equates with 21% whole person impairment. The one-tenth deduction (not complained about on appeal) then needs to be applied to the WPI assessment. 21% WPI less 1/10 equals 18.9% WPI (rounded to 19%).
21. The appellant does complain on appeal about the assessment of 1% WPI for scarring and says that the AMS erred by not assessing 2% WPI for scarring. The appellant says 2% WPI should be assessed for scarring to which a one-tenth deduction should be made. The respondent submitted the assessment by the AMS of 1% for scarring less one-tenth was not in error.
22. The AMS explained his assessment for scarring as follows:

“As concerns scarring, the claimant is conscious of the scars in both the right clavicular area and left lower extremity. There are some colour contrasts of the scar with surrounding skin and the claimant is able to easily locate the scars. There are minimal trophic changes but no suture marks are visible. The anatomic location is readily visible. The scars have a minor contour defect and there is some interference with activities of daily living but no treatment is required and there is no adherence.”
23. With regard to the scarring, the Panel notes that the TEMSKI criteria for 1% or 2% WPI are virtually the same. The only difference is the effect on ADLs with 1% WPI having ‘*No or negligible effect on any ADL*’ and 2% WPI having ‘*Limited effect on ADLs (clothing irritation)*’. The AMS has concluded that the scarring results in 1% WPI. Based on his description of the scarring the assessment by the AMS was open to him on the evidence and discloses no error.
24. Applying a one-tenth deduction to the scarring gives 1% WPI leaves 1% WPI after rounding.
25. The overall impairment assessment is therefore 20% WPI.
26. The Panel will accordingly revoke the MAC and issue a new MAC in accordance with this statement of reasons.
27. For these reasons, the Appeal Panel has determined that the MAC issued on 6 June 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*.

T Ng

Tina Ng  
Dispute Services Officer  
**As delegate of the Registrar**



**WORKERS COMPENSATION COMMISSION**  
**APPEAL PANEL**  
**AMENDED MEDICAL ASSESSMENT CERTIFICATE**

Injuries received after 1 January 2002

**Matter Number:** 803/19  
**Applicant:** David Robert Batcheldor  
**Respondent:** GC Schmidt (Plant) Pty Ltd trading as Schmidt Quarries

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 Crane 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 NSW workers compensation guidelines	Chapter, page, paragraph, figure and table numbers in AMA5 Guides 15 June 2016	% WPI	WPI deductions pursuant to S323 for pre-existing injury, condition or abnormality (expressed as a fraction)	Sub-total/s % WPI (after any deductions in column 6)
1. Right upper extremity	15 June 2016	Chapter 2 Pages 10-12	Chapter 16 Pages 433-521	21%	1/10	19% rounded
2. Scarring	15 June 2016	Chapter 14 Table 14.1 Pages 73-74		1%	1/10	1% rounded
<b>Total % WPI (the Combined Table values of all sub-totals)</b>						<b>20%</b>

**Jane Peacock**  
Arbitrator

**Dr Brian Noll**  
Approved Medical Specialist

**Dr Margaret Gibson**  
Approved Medical Specialist

1 October 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*.

T Ng

Tina Ng  
Dispute Services Officer  
**As delegate of the Registrar**

