

# WORKERS COMPENSATION COMMISSION

## CERTIFICATE OF DETERMINATION

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

**Matter Number:** 4984/19  
**Applicant:** Sanjay Prasad  
**Respondent:** Prixcar Services Pty Ltd  
**Date of Determination:** 20 December 2019  
**Citation:** [2019] NSWCC 419

The Commission determines:

1. The applicant suffered an injury to his cervical spine by way of aggravation of pre-existing degenerative changes in the course of his employment with the respondent with a deemed date of injury of 30 May 2016.
2. The anterior cervical discectomy and fusion surgery proposed by Dr Singh is reasonably necessary as a result of the injury referred to in (1) above.
3. The respondent is to pay the costs of and incidental to the surgery proposed by Dr Singh.

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

Cameron Burge  
**Arbitrator**

I CERTIFY THAT THIS PAGE AND THE FOLLOWING PAGES IS A TRUE AND ACCURATE RECORD OF THE CERTIFICATE OF DETERMINATION AND REASONS FOR DECISION OF CAMERON BURGE, ARBITRATOR, WORKERS COMPENSATION COMMISSION.

*A MacLeod*

Ann MacLeod  
Acting Senior Dispute Services Officer  
**As delegate of the Registrar**



## **STATEMENT OF REASONS**

### **BACKGROUND**

1. The applicant suffered an agreed injury in the course of his employment as a car detailer with the respondent as a result of the nature and conditions of his employment from 2002. There is no issue an injurious event took place, with a deemed date of injury of 30 May 2016.
2. He brings a claim seeking the cost of future cervical spine surgery said to arise from that injury, which he says caused an aggravation of a pre-existing condition in his cervical spine.
3. The respondent opposes the claim on the basis that the aggravation to the neck caused by work has ceased and been overtaken by a degenerative condition, and the applicant's ongoing problems are in fact referred from his shoulder rather than caused by any cervical spine condition.

### **ISSUES FOR DETERMINATION**

4. Does the applicant suffer from the effects of a work-related aggravation of the cervical spine, or has the effect of that aggravation passed?

### **PROCEDURE BEFORE THE COMMISSION**

5. The parties attended a hearing on 13 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. Mr C Tanner of counsel appeared for the applicant at the hearing, and Mr E O'Neill 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.

#### **Oral evidence**

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

### **FINDINGS AND REASONS**

#### **Does the applicant suffer from a work-related aggravation of his cervical spine necessitating the proposed surgery?**

9. The medical dispute in this matter concerns whether the effects of an accepted workplace aggravation to the applicant's neck have ceased and been supplanted by the accepted shoulder symptoms radiating to the cervical spine region.

10. The applicant must demonstrate on balance that the nature and conditions of his employment were the main contributing factor to the aggravation of his degenerative cervical spine condition, and that such aggravation has brought about the need for the proposed surgery. For the following reasons, I find the applicant has proven this to be the case.
11. The respondent's Independent Medical Examiner (IME) Dr Casikar accepts an aggravation to the underlying neck condition took place. He says the effects of that aggravation have ceased and the applicant's ongoing problems relate instead to referred symptoms from his shoulder, and accordingly the proposed surgery is not reasonably necessary.
12. I reject Dr Casikar's opinion and prefer those of Dr Moloney, the applicant's IME, supported as they are by the views of treating surgeons Dr Dave and Singh, together with Dr Lim, the applicant's General Practitioner (GP) and a welter of radiological evidence.
13. Dr Casikar's view flies in the face of the contemporaneous radiological scans. In his first report dated 7 November 2018, Dr Casikar says the applicant's neck complaints are caused by his shoulder injury. He rightly noted the applicant has degenerative changes in his cervical spine and said "his employment probably aggravated the pre-existing degenerative disease. He has stopped working in 2017, therefore, the workplace aggravation has ceased."
14. That reasoning is quite commonly seen in this jurisdiction; however, it is logically flawed. The effects of an aggravation do not automatically cease, and an affected body part revert to its natural state just because a person stops carrying out the work which has caused the aggravation to begin with.
15. Moreover, the radiological evidence by way of MRIs dated 11 July 2017, 9 April 2018 and 17 January 2019 all demonstrate multi-level cervical spine degenerative changes, including C6/7 issues, multi-level stenosis and C7 nerve root irritation. In my view, these examinations alone confirm the presence of cervical spine disc damage as the cause of the applicant's ongoing neck symptoms. This is particularly so given the unchallenged evidence of the applicant that his neck was asymptomatic before he commenced work with the respondent.
16. The findings on the MRI scans are confirmed by Dr Moloney, IME for the applicant and Dr Singh, treating neurosurgeon. As Mr Tanner noted, the applicant had shoulder problems does not mask the presence of clear disc damage in the cervical spine.
17. The evidence discloses the applicant made no complaint of neck pain before working with the respondent. His duties involved cleaning and detailing cars, and they were associated with fast paced, repetitive movements of his arms and the long-term craning of his neck as he went about his work over some 14 years.
18. Dr Casikar acknowledged the applicant's employment aggravated his neck condition. That is consistent with all the other medical evidence. Where Dr Casikar differs is in his assertion the effects of the aggravation have passed. As noted, his reasons for finding that to be the case are flawed.
19. By contrast, Dr Moloney provides cogent reasons as to why the applicant's aggravation remains ongoing. He notes:

"Dr Casikar's report is that all changes are constitutional wear and tear and that the pain following injuries is merely an aggravation and that all aggravation settled within six weeks of the injury.

The history is that he has sustained problems with his right elbow, his left shoulder, his right leg and his left arm, his neck and his back as a result of the nature and the conditions of his employment. The symptoms have not settled and so even if one were to say that his symptoms are an aggravation (rather than an acceleration) of pre-existing change this aggravation has not settled. There is no reason to suspect that Mr Prasad is lying when he tells us that his pain is ongoing.”

20. Dr Moloney’s views are supported by Dr Singh, treating neurosurgeon. I place a large amount of weight on Dr Singh’s views, as he is the surgeon prepared to undertake the surgery at issue and adopt the risks associated with it. Moreover, he has treated the applicant for some time and has a clear picture as to the onset and development of the cervical spine symptoms.
21. Further support for the proposition that the applicant’s neck symptoms have been caused by work-related aggravation of asymptomatic degenerative changes is found in the report of the respondent’s own occupation physician, Dr Keller. In his report at page 22 of the Application, Dr Keller says “the diagnosis would be of a work-related aggravation of age-related degenerative changes in the neck, back and upper limbs.”
22. I also note the report of Dr Dave, treating orthopaedic surgeon. He noted the results of a neck MRI taken a year after the applicant ceased work and which showed ongoing problems relating to C7 nerve impingement. In my view, the fact the applicant was still having problems associated with the cervical spine aggravation over a year after he ceased work is further reason to reject Dr Casikar’s opinion that the effects of the aggravation were transient and would have ceased within three months of stopping work.
23. Mr O’Neill also relied on the views of Dr Wallace, who noted a left shoulder and lumbar spine injury, but no neck symptoms when he examined the applicant in mid-2016. He said having regard to the complaints recorded by Dr Wallace, it appears neck symptoms first arose after the left shoulder surgery in or about December 2016, which in turn supports Dr Casikar’s opinion the ongoing neck symptoms are caused by the shoulder injury.
24. I reject that submission. The fact the applicant had shoulder symptoms and surgery does not dispose of the question of whether he also suffered a neck aggravation, or whether that aggravation persists. In any event, as Mr Tanner noted, the fact of a cervical spine aggravation is accepted by the respondent in its dispute notice. The relevant question for determination is whether the aggravation has ceased.
25. Mr O’Neill also questioned whether surgery was reasonably necessary, on the basis Dr Wallace says it is by no means clear that the operation would help the applicant’s shoulder. There is, however, no doubt in my mind that the preponderance of the evidence establishes the proposed surgery will most likely benefit the cervical spine symptoms suffered by the applicant, which include radicular symptoms into the shoulder. As I have accepted the major contributing factor to the aggravation of the cervical condition was the applicant’s employment, in my view the surgery is something which the applicant should not be precluded from having.
26. In any event, there is a long line of authority including cases such as *Diab v NRMA Limited* [2014] NSWCCPD 72 (*Diab*) and *Rose v Health Commission* (NSW) [1986] 2 NSWCCR 32 (*Rose*) which state a worker may be entitled to the benefit of treatment even if the evidence only discloses it may be of benefit. In my view, the evidence in this case is stronger than just that proposition. The proposed surgery is likely to alleviate cervical symptoms including radiculopathy to the shoulder. On balance, in light of the clear pathological signs in the applicant’s neck, I am of the view he will most likely benefit from the proposed operation.

27. As established in *Rose* and *Diab*, there are other considerations which are also relevant to deciding whether treatment is reasonably necessary. These include, but are not limited to, the appropriateness of the treatment, the availability of alternative treatment and the potential effectiveness of the alternative, the cost of the proposed treatment, the actual potential effectiveness of the proposed treatment and the acceptance by medical experts of the treatment as being appropriate and likely to be effective.
28. In this matter, the basis upon which the treatment was opposed was the view of Dr Casikar that the applicant's symptoms related to his shoulder rather than his neck. Given I have rejected that view, and the balance of the medical evidence so comprehensively establishes ongoing aggravation or exacerbation of previously asymptomatic changes in the neck, I find the proposed surgery reasonably necessary in the circumstances of this matter.
29. In so finding, I accept the views of Dr Singh and Dr Moloney that the surgery is likely to alleviate the applicant's cervical symptoms, which I have found stem from the work-related aggravation of previously asymptomatic degenerative changes. No complaint was raised by the applicant as to the cost of the procedure. I also note no submission was made to the effect the procedure is anything other than well-established and widely regarded by experts as an appropriate form of cervical spine treatment.

## **SUMMARY**

30. For the above reasons, I find the applicant suffered an injury by way of aggravation or exacerbation of the degenerative disease in his cervical spine to which the nature and conditions of his employment were the main contributing factor. I find the effects of that aggravation necessitate the applicant undergoing the surgery proposed by Dr Singh.
31. Accordingly, I make the findings and Orders set out on page one of the Certificate of Determination.