WORKERS COMPENSATION COMMISSION

CERTIFICATE OF DETERMINATION

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

Matter Number: **5924/19**
Applicant: **Gordon John Ibbotson**
Respondent: **Teagin Pty Limited (Deregistered)**
Date of Determination: **24 March 2020**
Citation: **[2020] NSWWCC 88**

The Commission determines:

1. I remit this matter to the Registrar for referral to an Approved Medical Specialist for an assessment of lump sum compensation pursuant to the Table of Disabilities, on the following bases:

    (a) Date of injury: 7 April 1995;

    (b) Matters for assessment: neck, back, left arm at or above the elbow, right leg at or above the knee.

2. I remit this matter to the Registrar for referral to an Approved Medical Specialist for an assessment of Whole Person Impairment for the purposes of s 59A of *the Workers Compensation Act 1987*, on the following bases:

    (a) Date of injury: 7 April 1995;
    (b) Matters for assessment: cervical spine, lumbar spine.

3. The evidence referred for both referrals shall be the documents consolidated under matter 5924/19 on 15 November 2019:

    (a) Application to Resolve a Dispute and attached documents;

    (b) Application pursuant to s 162 and attached documents;

    (c) Reply and attached documents;

    (d) Response and attached documents.

4. I grant liberty to apply to the parties on telephone notice to each other.

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

John Wynyard
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 JOHN WYNYARD, ARBITRATOR, WORKERS COMPENSATION COMMISSION.

H Mistry

Heena Mistry
Dispute Services Officer
As delegate of the Registrar

STATEMENT OF REASONS

BACKGROUND

1. Gordon John Ibbotson, the applicant, brings an action against Teagin Pty Limited (Deregistered), the respondent, seeking lump sum compensation and an assessment pursuant to s 59A of the *Workers Compensation Act 1987* (the 1987 Act) in relation to an injury that he suffered on 7 April 1995.

2. A s 74 notice was issued on 5 February 2018, and a s 287A notice issued on 9 September 2019.

3. The applicant lodged two applications, number 5926/19 regarding the application pursuant to s 59A, and number 5924/19 in respect of the lump sum claim pursuant to the Table of Disabilities.

4. A response was lodged to the s 59A Application and a Reply to the claim for lump sum compensation.

5. On 15 November 2019, the Commission issued a Direction joining both matters under number 5924/19.

ISSUES FOR DETERMINATION

6. The parties agree that the following issues remain in dispute:

    (a) Did Mr Ibbotson suffer a consequential condition to his cervical spine/neck as a result of the injury;

    (b) Did Mr Ibbotson suffer a consequential condition to his left arm at or above the elbow as a result of his injury.

PROCEDURE BEFORE THE COMMISSION

7. This matter was heard at Wyong on 17 February 2020. Ms Kavita Balendra of counsel appeared for the applicant with Mr James Parkin instructing solicitor and Mr Phillip Perry of counsel appeared for the respondent. 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.

EVIDENCE

Documentary Evidence

8. The following documents were in evidence before the Commission and taken into account in making this determination:

    (a) Application to Resolve a Dispute (ARD) and attached documents;
    (b) Application pursuant to s 162 and attached documents;
    (c) Reply and attached documents;
    (d) Response and attached documents.

Oral Evidence

9. No application for oral evidence was made.

FINDINGS AND REASONS

10. This is an unusual case in that Mr Ibbotson is claiming lump sum compensation for consequential injuries to his neck, left arm at or above the elbow and right leg at or above the knee in relation to an injury that is now 25 years old.

11. On 7 April 1995, he suffered injury to his lower back in the form of an aggravation of a prior injury in 1991.

12. On 28 May 1999, Mr Ibbotson received an award in the Compensation Court against the respondent (as second respondent), and a first respondent, Forama Pty Ltd trading as Hills Ford, which was the employer in 1991. He received weekly payments, s 60 expenses and lump sum payments for injury to both legs at or above the knee, the back, and loss of sexual organs. Hughes CCJ made orders in favour of Mr Ibbotson, and also apportioned liability as to 25% against the first respondent, and 75% against the present respondent, then the second respondent.

13. Mr Ibbotson gave evidence on 15 February 1999 before Hughes CCJ in that action. Mr Ibbotson spoke of the back spasms which were causing him to fall when his left leg gave way. These started occurring following surgery on 20 January 1997.

14. In his evidence, Mr Ibbotson's description of the dates upon which various events happened was inconsistent with that contained in his two statements that were before me, dated 7 April 2018 and 18 June 2019.

15. Mr Ibbotson told the Court that he worked at two separate venues for Forama Pty Ltd, beginning in 1989, and that he injured his back in March 1991 and went off work on 31 May 1991. He subsisted on sickness benefits for a while, and then unemployment benefits until 1993. The Commonwealth Employment Service (CES) then found work for Mr Ibbotson in Esperance, Western Australia, and he and his family relocated there in November 1993.

16. Mr Ibbotson worked at Norfolk Motors there until March 1994, when he found employment himself with a motor dealership in Perth. Mr Ibbotson stole $500 from Norfolk Motors to fund his shift, and was sentenced in the Perth Magistrate's Court for doing so. He commenced work with Young Toyota in Freemantle, and his employment was terminated in May 1994. He returned to the Central Coast in August 1994.

17. In his statement of 7 April 2018, Mr Ibbotson asserted that he worked for "Youngs" Toyota between April 1993 and 24 June 1993. He also said that he moved back to the Central Coast in November 1993, having earlier said that he relocated to Western Australia in the same month, November 1993.[1] I prefer the more contemporaneous evidence, given under oath, before Hughes J in February 1999.

18. In his evidence before Hughes CCJ, Mr Ibbotson said that because he had been "sacked" from his employment in Freemantle, he was put on unemployment benefits. He found a job as a part time console operator at Erina for about three months. Again, through the auspices of the CES he obtained work with the current respondent in January 1995 on a permanent 36-hour shift per week. In early April 1995, Mr Ibbotson injured his back whilst attempting to scrub a stain off the floor. He ceased work on 1 May 1995 (his statement alleged 31 May 1995), and has not worked since.

[1] ARD page 15, paragraphs [28],[33] and [34].

19. Mr Ibbotson said in his statement that he had never recovered fully from that injury. He was referred by his GP to Dr Isaacs, Orthopaedic Surgeon, and came to surgery with him at Maitland Hospital. The operation occurred on 20 January 1997 and consisted of excision of the L4/5 disc and decompression at L4/5 and L5/S1 for severe lateral canal and foraminal stenosis at those levels.

20. This procedure did not assist Mr Ibbotson. He has been assessed by a number of medical practitioners down the years, but has not had any further invasive treatment. Dr Vijay Panjratan, Orthopaedic Surgeon, was retained by the respondent and has assessed Mr Ibbotson on a number of occasions since 2016. The first assessment was 23 November 2016, and Dr Panjratan gave a useful summary of Mr Ibbotson's progress up to that time.[2]

21. He said that Dr John Bentivoglio wrote to Mr Ibbotson's GP, Dr Weiermann on 11 September 2008, having seen Mr Ibbotson 13 years earlier. Dr Bentivoglio thought Mr Ibbotson was suffering from a "failed back surgery syndrome," and reported that he was:

> "….. plagued by constant back pain and left leg pain, recurrent spasms in the back and legs and there are associated issues with depression, anxiety, psychomotor slowing, polypharmacy and opiate induced hyper-analgesia. The management problem is immense…."

22. Treatment at the Royal North Shore Hospital pain clinic in 1997, and more recently by Dr Mark Russo at the Hunter Pain Clinic was noted. Attendance at Gosford District Hospital pain clinic between 1998 and 2004 was also referred to, as was a recent discharge by Dr Russo who had said "there is little prospect of any significant hope."

23. Dr Panjratan reported on 23 November 2016 that Mr Ibbotson's wife advised him that her husband had suffered "really bad spasms since surgery" and that his left leg gave way. She said that he tended to fall over all the time as he developed spasms and his leg gave way. The spasm, she said, was almost like a seizure. Mrs Ibbotson said that a few years before the spasm had been so bad that she could not control it and called an ambulance, who administered Valium to little effect.

24. Dr Panjratan was shown a discharge from Gosford Hospital dated 16 November 2016, when lacerations in Mr Ibbotson's right forearm due to a fall had to be sutured. Dr Panjratan noted that the discharge recorded that Mr Ibbotson had presented with "multiple lacerations at the right for arm post falling on shattered glass accidentally." There were apparently 23 stitches, but no glass was revealed on x-ray.

25. Dr Panjratan also set out some detail difficulties Mrs Ibbotson reported about daily life. She said she was unable to sleep with her husband because he jerked around with his back spasms and hit her accidentally. She said he was incapable of any activity around the house, that he wore a necklace with a Vital Alert to get her attention. He got very confused and did not socialise or do anything. Mr Ibbotson had been using a walker for a couple of years at that stage. Before then he walked with a limp.

26. Dr Panjratan's opinion was that Mr Ibbotson's disabilities were not only due to the back, as there seemed to be other medical problems - namely getting spasms serious enough to fall down, similar to an epileptic fit. Dr Panjratan thought that medical investigation was required in that regard, as he had not hitherto seen such symptoms in back pain patients.

27. Dr Panjratan supplied five further reports, dated 5 December 2016, 6 December 2017 (three) and 24 January 2018.

[2] Response (not paginated) page 2 of the report

28. Dr Panjratan recorded in his 2017 reports much the same limitations as were reported initially. Mr Ibbotson was now using oxygen at night. Dr Panjratan noted the respondent's advice that Mr Ibbotson had then commence claims relating to new body parts including the cervical spine and bilateral arms.

29. Dr Panjratan recorded a complaint of pain in the back of the neck. This had been present for the past 12 months following a fall in which Mr Ibbotson tried to protect himself with his arm and threw his neck back. Mr Ibbotson felt he had suffered a whiplash type injury, Dr Panjratan recorded.

30. On examination, Dr Panjratan said that the cervical spine revealed a normal range of motion, and that Mr Ibbotson moved without pain, although he had some pain at the base of the cervical spine.

31. Dr Panjratan noted that an MRI scan had been done by Associate Professor Heard about six months before, which apparently demonstrated some cervical pathology. Dr Panjratan noted that there were no problems in the cervical spine until 12 months before, and thought it may not have been mentioned (presumably, to him) because it had nothing to do with the lower back.[3]

32. When asked whether he considered Mr Ibbotson's neck condition to be consequential to the back injuries of 1991 and 1995, the respondent's solicitors advised:[4]

> **"….The test is 'does the worker suffer from injury to the neck as a result of work-related injury on 13 March 1991 or 7 April 1995'."**

33. Dr Panjratan answered:

> "Mr Ibbotson did not complain of any neck condition and symptoms. He moved his neck freely within the limits of his age. There was no asymmetrical loss of motion."

34. In answer to a similar question regarding Mr Ibbotson's arms, Dr Panjratan said:

> "Regarding the arms, again there was no complaint as such."

35. On 5 February 2018, the respondent's insurer issued a s 74 Notice denying liability for the claims pursuant to s 66 in respect of the injuries in respect of which claims have been made. At that time claims were in relation to both legs and both arms, as well as the neck.[5]

36. Liability was denied on the alternative bases that:

    (a) there had been no injury to the nominated body parts;
    (b) (presumably in the alternative), employment was not a substantial contributing factor to the injuries;
    (c) in the alternative, if the injuries were found to be as a result of a disease process, employment was not the main contributing factor to the injuries;
    (d) in the alternative, that the alleged injuries were not suffered by way of consequence to the "work-related injury";
    (e) in the alternative, that the claim was excessive.

[3] Response, Dr Panjratan's first report of 6.12.17, pages 3-4.
[4] Response, Dr Panjratan's first report of 6.12.17, page 6 (f).
[5] ARD page 278.

37. On 12 February 2018, the respondent's insurer sent a s 74 notice with regard to payment of Mr Ibbotson's weekly compensation.[6] The notice alleged that weekly payments were not payable due to the provisions of s 39 of the 1987 Act. The notice did not stipulate when payments ended, and neither did the review carried out pursuant to s 287A. Dr Bodel noted in his report of 15 October 2019 that payments ceased on Christmas day 2018. Mr Ibbotson has been in receipt of the Disability Support Pension since.

38. The s 74 Notice of 5 February 2018 referred to reports that had then been served by the applicant from Dr Robin Higgs. These reports were not relied on ultimately and the applicant relied upon the report of Dr Bodel in lieu. In the review of 7 November 2019 pursuant to s 287A, the insurer denied liability on the basis that Dr Bodel failed to give a definitive diagnosis, as he failed to connect the neck symptoms caused by the fall to the subject back injury. Dr Bodel's diagnosis was criticised, as it was limited to "mechanical symptoms in the back", "referred pain in both legs" and "neck and arm pain the consequence of multiple falls."

39. Mr Ibbotson's General Practitioner was Dr Christine Weiermann in 2003. On 12 February 2003 she wrote to the claims manager at NRMA Workers Compensation Ltd. She said that Mr Ibbotson had suffered from chronic lower back pain since his injury in 1995, and that following spinal surgery on 13 January 1997, he developed a swelling over his lumbar wound which was thought to be a dural leak or haematoma that settled spontaneously. She wrote:[7]

> ".... Gordon continues to suffer from chronic lower back pain associated with episodic lower back muscle spasm resulting in falls."

40. She referred Mr Ibbotson to Dr Robert Heard, Neurologist, who reported on 3 November 2003. Dr Heard had earlier seen Mr Ibbotson in 1998. He said:[8]

> "Unfortunately he has worsened rather than improved. He has been experiencing increasingly severe muscular spasms in the lumbar region. These are episodic and extremely painful. He Is quite certain that it Is the spasms, developing spontaneously, which cause the pain rather than pain resulting in spasm. This would be unusual for pain related to a back injury and makes me wonder about another cause here. The spasms occur unpredictably, without triggering. They occur most days, sometimes several times a day and each spasm last 30 - 60 seconds.
>
> The spasms are a clear-cut contraction of the lumbar region, which may cause arching of the back or twisting to one side. Thus it is not merely a chronic pain syndrome. Between these episodes he is not too bad. His legs feel strong and there has been no sphincter disturbance other than some minor hesitancy which suggest early prostatism."

41. By 11 November 2010, Dr Heard was an Associate Professor when he next reported.[9] He diagnosed a "failed back surgery syndrome." In his opinion A/Prof Heard said:

> "... The development of spasms is probably reflexive and related to pain but the rare possibility of stiff men's syndrome needs to be considered..."

42. On 14 December 2010, A/Prof Heard reported that there had been a "useful" response to Lyrica which had apparently lessened Mr Ibbotson's pain and reduced his spasms. A/Prof Heard did not see Mr Ibbotson again.

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[6] ARD page 253
[7] ARD page 153
[8] ARD page 154
[9] ARD page 171

43. Dr James Bodel is an Orthopaedic Surgeon who assessed Mr Ibbotson on the same day as his report, 15 October 2019.[10] He was in receipt of a letter of instructions dated 9 October 2019 from Mr Ibbotson's solicitors.[11] It was agreed between the parties that contained within the letter was a comprehensive and accurate chronology of the complaints recorded the clinical notes of Mr Ibbotson's GP. It is accordingly unnecessary to rehearse each entry, but rather to simply note the many entries which described the falls reported by Mr Ibottson to his medical centre, Erina Family Medicine. The entries showed a constant tendency by Mr Ibottson to fall, going back through the years from 2012 to 1996. The records reported quite often that the falls would follow a back spasm, and that Mr Ibottson complained of injuries to other parts of his body, including the neck, both arms and both legs.

44. Dr Bodel took a consistent history to that recorded by Dr Panjratan, including Mr Ibbotson's allegations that he had had a number of falls which caused injury to his neck and a laceration to the ulnar side of the forearm (presumably the right forearm). He noted that Mr Ibbotson lived in a Housing commission unit which has some disability aids including rails in the bathroom. He recorded that Mr Ibbotson's wife was his carer. He noted that Mr Ibbottson had been using a "wheelie-walker" over the last 5 to 10 years. Dr Bodel noted that Mr Ibbotson had suffered multiple falls. He said:[12]

> **"CURRENT COMPLAINTS**
> • He has a constant dull aching pain in the lower part of the back and across both legs. The pain radiates all the way to the foot on both sides.
>
> • He has had a number of falls and they have caused injuries to the neck and a laceration on the ulnar side of the forearm.
> • He remains under the care of his local doctor."

45. On examination of the neck, Dr Bodel found tenderness in the trapezius muscles at the base of the neck on the right side and guarding in that area. He found a reduced range of motion which was asymmetric. He found no clinical sign of radiculopathy in the upper limbs.

46. Dr Bodel repeated his opinion later in his report: [13]

> **"1. History of injury /injuries obtained.**
> This gentleman suffered an injury to his back and referred pain into both legs in the two episodes of injury as described above.
>
> He has also had a number of falls since then and has had injuries to his neck and shoulders as a consequence of that."

47. Dr Bodel's assessment was:[14]

> "This gentleman has mechanical symptoms in the back and referred pain into both legs as a result of the original injuries to the discs at the lumbosacral junction. He has neck and arm pain as a consequence of the multiple falls that have occurred since that time.
> …
>
> This gentleman has no specific injury in the right arm at or above the elbow and no specific injury in the right arm below the elbow.

[10] ARD page 87
[11] ARD page 98
[12] ARD page 89
[13] ARD page 91
[14] ARD pages 91-92

> He has referred pain from the neck into the left arm at or above the elbow and no specific injury to the left arm below the [elbow].
>
> He does have an ongoing impairment involving the neck and the cervical spine and he has bilateral lower leg pain on the right and the left side with assessable loss in the right leg at or above the knee and in the left leg at or above the knee. There is no separate loss below the knee in either leg."

Submissions

48. Mr Perry submitted that Mr Ibbotson had not met his onus. Whilst Dr Bodel reported that Mr Ibbotson had injured his neck as a result of the falls, Dr Bodel failed to make the causal link between the falls and the subject injury of 1995. He submitted, as I understood it, that there had been a novus actus interveniens in about 2016 as Mr Ibbotson told Dr Panjratan on 6 December 2017 that he had suffered a neck injury as a result of a fall some 12 months prior to seeing him. Dr Panjratan then noted a complaint of pain at the base of the neck on examination.

49. Mr Perry submitted further that Dr Panjratan did not find any asymmetry of motion on examination, whereas a year later Dr Bodel found such a sign. It followed, Mr Perry argued, that Mr Ibbotson's neck complaints were of recent origin and certainly could not be causally linked with the accident of 1995. He referred to *Murphy v Allity Management Services Pty Ltd*[15] and *Moon v Conmah Pty Ltd*[16].

50. Mr Perry submitted that Ms Balendra would have to rely on the common sense principles in *Kooragang Cement Pty Ltd v Bates*[17] to forge any causal connection, and that even so such a reliance would have to fail, as she did not have the evidence to demonstrate that the accepted injury to the lumbar spine in 1995 had made a material contribution to the present condition of Mr Everson's neck. Mr Perry referred to the findings by Dr Bodel under "history of complaints", reproduced above. Mr Perry submitted that Dr Bodel had made no finding that the falls which were responsible for causing injury to Mr Ibbotson's neck were related to the subject injury to his lumbar spine in 1995. Mr Perry submitted that I would prefer the opinion of Dr Panjratan that there was no such relationship.

51. Ms Balendra referred to the contemporaneous entries in the clinical notes of Erina Family Medicine that Mr Perry conceded were accurately reflected in the letter of referral to Dr Bodel by Mr Ibbotson's solicitors. She also referred to the supplementary statement by Mr Ibbotson that also contained the chronological order of treatment that he had undergone. She said I could therefore accept with some confidence Dr Bodel's opinion, as those contemporaneous records demonstrated that Mr Ibbotson indeed did have his unusual condition. Mr Ibbotson's falls as a result of spasm in his back were a matter of contemporaneous record, as were the consequent symptoms in his cervical spine, his legs and his left arm.

52. Ms Balendra submitted that Dr Bodel acknowledged receipt of documentation that made the connection between the claimed symptoms, the falls and the subject injury. She submitted that it was clear from Dr Bodel's report that he was aware of the connection. Ms Balendra took me to the various notes mentioned in the letter of instructions from her instructing solicitors to Dr Bodel.

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[15] [2015] NSWWCCPD 49 (*Murphy*)
[16] [2009] NSWWCCPD 134 (*Moon*)
[17] (1994) 35 NSWLR 452 (*Kooragang*)

53. In reply, Mr Perry submitted that I could not accept that the cervical condition was connected, as it was of recent origin. There was some debate between Ms Balendra and Mr Perry as to whether he had conceded that the cervical symptoms had been the subject of the clinical notes identified in the letter of instructions to Dr Bodel. Mr Perry noted that the matter had been before another Arbitrator who apparently had also alluded to a failure to prove any causal connection. I interpolate to note that my impression of Mr Perry's argument was that although he conceded there were references to the cervical spine in the letter of instructions, the complaint made to Dr Panjratan constituted a complaint of a fresh and unrelated injury in 2017.

Discussion

54. Mr Ibbotson presents with a condition that has been something of a diagnostic puzzle to the various medical practitioners who have treated him. The contemporaneous records show that Mr Ibbotson has had an unusual condition whereby his back would spasm and he would fall. Indeed these symptoms that have been described by both he and his wife, for many years. He has defied conventional diagnosis. A/Prof Heard queried whether he had "stiff men's syndrome", but did not take the query any further when it was found that Mr Ibbotson was responding well Lyrica in 2010. Dr Bentivoglio and A/Prof Heard considered without deciding whether he had a "failed back surgery" syndrome.

55. There is some cause for doubt as to whether the effects of the surgery caused Mr Ibbotson's syndrome, as the first contemporaneous reports of falls are recorded from July to December in 1996 (with reference to the failure of the left leg), in September and December 1996 (with regard to the right leg), August and December 1996 (with regard to the right arm), and July 1996 (with regard to the left arm).[18] Every recorded instance cites a fall as being the cause of the complaint.

56. Dr Bodel supports a causal connection. I do not read his report as lacking the necessary explanation regarding nexus between the back injury, the falls and the neck symptoms. Whilst he might have expressed himself a little more clearly, nonetheless his findings as to the history obtained were that Mr Everson had suffered an injury to his back with referred pain into both legs in what he described as "the two episodes of injury," which is clearly a reference to the 1991 and 1995 back episodes. Dr Bodel then found that Mr Ibbotson subsequently had a number of falls, with injuries to the neck and shoulders "as a consequence of that." In context, "that" can only be a reference to the back injury caused by the two episodes described.

57. In any event there is sufficient contemporaneous corroboration for Mr Ibbotson's somewhat bizarre affliction, to which I have referred. There are the contemporaneous reports set out in Mr Ibbotson's letter of referral to Dr Bodel. There are also the observations of Mr Ibbotson's wife, who reported the occurrence of her husband's back spasms since his surgery, with consequential falls when his leg gave way. Although some caution must be observed in accepting such evidence, bearing in mind the nature of the relationship, Mrs Ibbotson's comments as reported by Dr Panjratan have not been challenged. Her reported claims, when added to the contemporaneous objective documentary evidence from the clinical notes, attain some probative value. The body of this evidence supplies a fair climate for Dr Bodel's opinion, even if there were some doubt about his clarity of expression. Dr Panjratan thought that further medical investigation was required as he had never seen symptoms such as those exhibited by Mr Ibbotson in back pain patients. Dr Panjratan went as far as to suggest that the symptoms were similar to epileptic fits. Nonetheless the syndrome, to use A/Prof Heard's terminology, has been consistently and objectively recorded since 1996.

[18] ARD pages 98-100.

58. It is not necessary for me to define the exact nature of the injuries sustained by Mr Ibbotson. In *Inghams Enterprises Pty Limited v Belokoski* [19] DP Snell considered, inter alia, that obligation of an Arbitrator to define the precise nature of the injury will depend on the circumstances of each case. No application was made in the present case for a precise finding as to the pathology involved, rather, the denial of liability was based on there being no connection between the consequential symptoms and the subject back injury. As I have commented, in the circumstances of this case the exact nature of the consequential conditions is the subject of some debate, and not something that can be defined by a non-medical opinion.

59. The essential question is as to whether the applicant has satisfied his onus of showing that the claimed conditions are as a consequence of Mr Ibbotson's accepted injury to his back. I am satisfied on the common sense test set out in *Kooragang* that he has. In both *Murphy* and *Moon* it was accepted that a worker's condition could be multifactorial in nature, but still result in liability being found against an employer where it could be shown that the subject injury materially contributed to the claimed consequential conditions.

60. I do not place much store in the submission that Dr Panjratan found no asymmetry of motion in the neck whilst Dr Bodel did, one year later. I am not persuaded that Dr Bodel's finding indicates the presence of a novus actus interveniens. It is not unusual for medical experts on either side of the record to make contradictory findings, which is why the opinion of a truly independent expert, the Approved Medical Specialist (AMS), is paramount.

61. The contemporaneous evidence reports many instances and complaints of neck (and other) symptomatology following falls by Mr Ibbotson as a result of his back spasming. Dr Panjratan may well be correct that such a syndrome is bizarre and unique in his experience, but there are many recorded instances of it occurring in the circumstances of this case.

62. It follows that the necessary material contribution has been demonstrated, as I have indicated. Dr Bodel had the benefit of having the contemporaneous evidence in the form of a chronology relating to each symptomatic condition produced in his letter of instructions. His findings were that the number of falls experienced by Mr Ibbotson had caused neck and left arm pain.

63. Dr Bodel accepted that these symptoms in the left arm were caused by referred pain from the neck condition, but found there was no specific "injury" to the right arm, by which term I take to mean relevantly any consequential condition. Dr Bodel was satisfied that there was symptomatology in both legs caused by referred pain from the back.

64. Notwithstanding Dr Bodel's findings regarding symptomatology in both legs, and notwithstanding the denial of liability therefore contained in the s 74 Notice of 5 February 2018, the applicant limited his claim to a consequential condition in the right leg only.

65. Further, whilst I note that the applicant has "ticked the box" on page 1 of the application seeking an assessment pursuant to section 59 A of the 1987 Act, the s 74 Notice of 12 February 2018, and the subsequent s 287A notice were concerned with the cessation of weekly payments pursuant to s 39 of the 1987 Act. It seems likely that the applicant's intention had been to seek a referral to an AMS for assessment as to whether the degree of permanent impairment was more than 20%. This matter was not raised at the hearing and I am compelled to make the orders on the terms sought by the applicant. I shall grant Liberty to apply to the parties regarding this issue.

[19] [2017] NSWWCCPD 15.

66. Accordingly, for the purposes of the claim for lump sum compensation pursuant to the Table of Disabilities the matter will be remitted for referral to an AMS for assessments regarding impairment to the back and the neck, together with the resulting injuries to the right leg and the left arm, in the appropriate nomenclature.

67. Regards the claim pursuant to s 59A, the referral will be limited to an assessment of the lumbar and cervical areas of the spine. Under the Whole Person Impairment regime, under which s 59A applications are assessed, there is no separate entitlement for upper or lower limb symptomatology that has its origin in referred pain from the spine.

SUMMARY

68. I remit this matter to the Registrar for referral to an AMS for an assessment of lump sum compensation pursuant to the Table of Disabilities, on the following bases:

    (a) Date of injury: 7 April 1995;

    (b) Matters for assessment: neck, back, left arm at or above the elbow, right leg at or above the knee.

69. I remit this matter to the Registrar for referral to an AMS for an assessment of Whole Person Impairment for the purposes of s 59A of the 1987 Act, on the following bases:

    (a) Date of injury: 7 April 1995;
    (b) Matters for assessment: cervical spine, lumbar spine.

70. The evidence referred for both referrals shall be the documents consolidated under matter 5924/19 on 15 November 2019:

    (a) Application to Resolve a Dispute and attached documents;

    (b) Application pursuant to s 162 and attached documents;

    (c) Reply and attached documents;

    (d) Response and attached documents.

71. I grant liberty to apply to the parties on telephone notice to each other.