

WORKERS COMPENSATION COMMISSION

CERTIFICATE OF DETERMINATION

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

Matter Number: 6713/19
Applicant: Nader Parsa
Respondent: LMK Mechanical Auto Repairs Pty Ltd
Date of Determination: 30 March 2020
Citation: [2020] NSWCC 97

The Commission determines:

1. The applicant sustained injury to his lumbar spine, cervical spine, left shoulder, left knee and both elbows arising out of or in the course of his employment with the respondent (deemed date 8 April 2019).
2. Award for the respondent in respect of the allegation of an injury to the applicant's right knee.

The Commission orders:

3. The matter is remitted to the Registrar to be referred to an Approved Medical Specialist pursuant to section 321 of the *Workplace Injury Management and Workers Compensation Act 1998* for assessment of whole person impairment as a result of the injury with deemed date 8 April 2019 of the following body parts:
 - (a) Lumbar spine;
 - (b) Cervical spine;
 - (c) Left upper extremity (shoulder, elbow);
 - (d) Right upper extremity (elbow);
 - (e) Left lower extremity (knee).
4. The materials to be referred to the Approved Medical Specialist are to include:
 - (a) The Application to Resolve a Dispute and all attachments;
 - (b) The Reply and all attachments;
 - (c) Application to Admit Late Documents filed by the applicant on 3 March 2020;
 - (d) Application to Admit Late Documents filed by the respondent on 31 January 2020.

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

Jill Toohey
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 JILL TOOHEY, ARBITRATOR, WORKERS COMPENSATION COMMISSION.

L Golic

Lucy Golic
Acting Senior Dispute Services Officer
As delegate of the Registrar



STATEMENT OF REASONS

BACKGROUND

1. Mr Nader Parsa claims lump sum compensation for injuries to his cervical spine, lumbar spine, left shoulder, left elbow and knee, and his right elbow and knee. He claims he sustained those injuries in the course of his employment as a mechanic with LMK Mechanical Auto Repairs Pty Ltd (the respondent) between 2013 and 8 April 2019.
2. The respondent has accepted liability for injury to Mr Parsa's lumbar spine.
3. By a notice issued under s 78 of the *Workers Compensation Act 1987* (the Act) on 6 December 2019, the respondent denied liability to compensate Mr Parsa for permanent impairment of his lumbar spine on the ground that the injury has not resulted in whole person impairment greater than 10 per cent. The respondent denied that any of the other claimed injuries were the result of his employment.
4. The present proceedings were commenced by an Application to Resolve a Dispute registered with the Commission on 18 December 2019. At that time, a claim for injury to the thoracic spine was also in dispute but was abandoned by Mr Parsa at the hearing on 4 March 2020.

ISSUES FOR DETERMINATION

5. The parties agree that the issues remaining in dispute are whether Mr Parsa sustained disease injuries to his cervical spine, his left shoulder, left elbow and knee, and his right elbow and knee, to which his employment was the main contributing factor.

PROCEDURE BEFORE THE COMMISSION

6. The parties attended a hearing on 4 March 2020. Mr Josh Beran of counsel appeared for Mr Parsa. Mr Paul Stockley of counsel appeared for the respondent.
7. 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) The Application to Resolve a Dispute and attached documents;
 - (b) The Reply and attached documents;
 - (c) Application to Admit Late Documents filed by the respondent on 31 January 2020 and attachments;
 - (d) Application to Admit Late Documents filed by the applicant on 3 March 2020 and attachments.

Oral evidence

9. There was no application to cross-examine Mr Parsa or to adduce oral evidence.

FINDINGS AND REASONS

Mr Parsa's statement

10. Mr Parsa's evidence is set out in a written statement dated 16 December 2019 which was prepared with the assistance of a Farsi interpreter. It is fairly brief, and the most relevant parts are set out below.
11. Mr Parsa states that he did "mechanical work" for the respondent for approximately four years. He describes his injuries as follows:

"The injuries involved my neck, back, left shoulder and elbow, right elbow and left knee.

On Monday 8 April 2019, I was at work when the pain significantly increased. At the time I was lifting a very heavy tire on my own and without assistance. However, I can say that is due to repetitive heavy lifting, bending and twisting at work. I do not say there is any specific frank injury. I say that the onset of injury is gradual and has occurred due to the nature of my duties overtime. I had to stop working on 8 April 2019 due to severe pain on that date and it is due to the fact that I had to do heavy work over a long period of time.

I did not go to a doctor straightaway as I did not want to complain and then the pain got worse, it did not get better so I went to a doctor roughly one or two days later. The doctor was Mohammad Omar [sic: Omer] and he prescribed me pain killers. I was admitted to an emergency department on 15 April.

My treating GP is Dr Sebastian Calvache-Rubio from Workers Doctors. I have undertaken in [sic] Physiotherapy. I am seeing a Neurosurgeon Dr Peter Khong for treatment."

12. The reference to being admitted to an emergency department on 15 April suggests it occurred following the injury on 8 April 2019. However, Westmead Hospital records show that Mr Parsa was admitted to the emergency department there on 15 April 2018 complaining of lower back pain. Mr Parsa has volunteered information about the 2018 incident to his doctors, so the suggestion that it followed the workplace injury may reflect that his statement was prepared with the assistance of an interpreter. In any event, nothing turns on this.
13. Mr Parsa states that he has been unable to get back to work since 8 April 2019. He describes his current symptoms as follows:

"Currently I have significant pain and stiffness in my neck. This pain radiates to my left shoulder where there is also tightness and loss of strength and motion. I have pain in both of my elbows. The pain in my lower back is significant and extreme. The pain radiates down both my legs, more so on the right side. I have trouble sleeping because of the pain. The pain is worse when I sit or stand. I also get occasional electric shocks in my left thumb and ring finger. There is pain in my knees. My left knee clicks now. I have significant pain in the knee. I have a pins and needles sensation in both my legs, my heels and toes."

14. In an injury claim form, Mr Parsa referred to an injury on 8 April 2019 “changing tyer [sic], lifting the tyer above the shoulder”. He described the affected body parts as “lower back, neck, knee”. The date he signed the form is not clear from the document. It could be 21 April 2019 or possibly 29 April 2019. (I note the AB Investigations report (below) states it was 20 or 21 April 2019). It appears it was after he first consulted Workers Doctors because the claim form cites Dr Lim as his nominated treating doctor (although clinical notes do not show that he actually saw Dr Lim, and Workers Doctors records show Mr Parsa first attended on 26 April 2019).

Evidence about Mr Parsa’s duties

15. On 12 June 2019, ReCare Services (ReCare) provided a Worksite Assessment Report to EML Workers Compensation, the stated purpose of which was to assess Mr Parsa’s current duties as a mechanic at the respondent and to ensure that he continued to have a safe return to work.
16. The ReCare assessment was completed at Mr Parsa’s workplace. He was invited to attend but, according to the report, declined “due to high levels of pain that day”. The assessor subsequently met with Mr Rami Taouk, supervisor at the workplace, to complete the assessment.
17. The report notes that Mr Parsa told the assessor that he sustained injuries to his neck, back, right elbow and left knee in the course of his usual duties with the respondent and that his pre-injury duties required repetitive heavy manual lifting of engine parts, tyres and tools, and involved repetitive bending and twisting.
18. The report includes observations of the workplace environment, with photographs, including large car hoists and “several lifting devices including car jacks, engine hoist, gear box stand, and forklift located throughout the workshop for staff to use”.
19. The physical requirements of Mr Parsa’s pre-injury duties are set out in the report. Removing engine and gear boxes from cars by means of an engine hoist and gear box stand comprised 80% of his pre-injury duties and are assessed as “medium to heavy”. The postural requirements included dynamic standing and walking, stooping and bending, forward reaching, trunk twisting and sustained overhead reaching under load. Kneeling, crouching and squatting were “rare”. The manual handling requirements included lifting and carrying tyres of 10 kilograms, but up to 20 kilograms, at chest and head level, and forceful push/pull at head and chest level up to 50- kilograms.
20. Ten per cent of the duties, involving similar postural and manual handling requirements, are assessed as “medium” and a further 10 per cent as “light”.

AB Investigations report

21. On 6 December 2019, AB Investigations provided a report to EMP Michael Lawyers of their investigation into the circumstances of Mr Parsa’s injury. The report includes conversations and correspondence with Mr Saad Ali El-Hossein, the owner of the business.
22. Mr El-Hossein described Mr Parsa to the investigator as a “good worker”. He recalled him taking a day off sick that week, and receiving a text message from him around the time of the injury date to say he was sick, and it was about his back. Mr Parsa did not give any further details and didn’t mention any other body parts.

23. With respect to how the injury was said to have occurred, Mr El-Hossein said Mr Parsa would never be required to lift a tyre above shoulder height. Mr El-Hossein told the investigator he had been advised of a Workcover certificate referring to repetitive heaving lifting, bending and twisting. He said “there is no heavy lifting in the workshop” and he referred to the equipment available for that purpose. He said “There may be some bending and twisting in order to do normal motor mechanic work.”

Medical evidence

Report of Dr Guirgis

24. Dr Medhat Guirgis, orthopaedic surgeon, saw Mr Parsa for assessment on 14 August 2019. He took a history from Mr Parsa of “reporting pain in his neck, back, right elbow, and left knee” on 8 April 2019 in the course of his duties. It is not clear from Dr Guirgis’ report whether Mr Parsa said he reported pain in those body parts on 8 April 2019 and, if so, to whom.
25. Dr Guirgis took a history that “one year ago” Mr Parsa developed pain in his neck and back during weekdays. He persevered at work, but on a weekend he developed an acute back episode and was taken by ambulance to Westmead Hospital. He was off work for a week before resuming normal duties. As time passed, the situation worsened, rendering him unable to work after lifting a heavy tyre on his own on 8 April 2019, “triggering another acute back episode”.
26. The reference to an acute episode “one year ago” is not completely accurate in that it was more like 16 months, but nothing really turns on this.
27. Dr Guirgis noted ongoing current symptoms as:
- (a) Neck pain and stiffness with radiation to the left shoulder and the top of the left shoulder blade.
 - (b) Pain, tightness and loss of strength in the left shoulder.
 - (c) Left medial elbow pain with attacks of extension of the pain and dysthaesiae along the inner border of his forearm to the hand and little & ring fingers.
 - (d) Right lateral elbow pain.
 - (e) Mid-back pain and stiffness with pain extending along the left side of his chest wall.
 - (f) Lower back pain and stiffness with extension of the pain along the outer border of his right thigh.
 - (g) Anterior patellofemoral arthralgia with clicking in his left knee.
28. Dr Guirgis reported the findings of his clinical examination in detail. With respect to the cervical spine, he noted somewhat reduced range of motion, with guarding of the paraspinal collar muscles on exceeding the ranges found. Tenderness was elicited. Normal cervical lordosis was preserved and there were no neurological deficits in the upper limbs of nerve root origin.
29. With respect to the left shoulder, Dr Guirgis found “evidence of altered rhythm between glenohumeral and scapulothoracic movements” and “evidence of reduced abduction power against resistance” and “tenderness over the anterior half of the rotator cuff of the shoulder.” Hawkins-Kennedy and Neer Impingement Tests were positive.

30. In the left elbow, Dr Guirgis found “localised tenderness over the internal epicondyle and extension of that tenderness to involve the medial inter-muscular septum in the lower part of his upper arm.” The ulnar nerve was “clinically irritable with positive Tinnel's sign reproducing the pain and tingling in his ulnar nerve territory as described by him in his complaints.” He found no objective sensory or motor deficits.
31. In the right elbow, Dr Guirgis found tenderness over the soft tissue attachments to the external and internal epicondyle of the humerus with normal range of movements. Provocation tests were positive. Certain manoeuvres exacerbated the pain in the lateral epicondyle.
32. In the lumbar spine, Dr Guirgis reported that normal lumbar lordosis was lost, and tenderness was elicited over the left sacroiliac joint, and over the L4 and L5 spine and spaces. Range of motion in all directions was reduced. Straight leg raising was positive on the right side at 80 and on the left at 50, and tension signs were positive on the left.
33. With respect to the left knee, Dr Guirgis found no evidence of effusion, and ligaments were clinically intact. Movements of the knee joint were normal. There were indications of chondromalacia patellae, and there was retro patellar crepitus on flexing and extending the knee.
34. Dr Guirgis diagnosed injuries to the lumbar and cervical spine in the form of “cumulative-micro-musculoligamentous sprain”. He diagnosed post-traumatic overuse symptoms of subacromial impingement of the left shoulder joint, left medial epicondylitis with symptoms of left ulnar cubital tunnel syndrome, right lateral epicondylitis, and chondromalacia patellae in the left knee.
35. As to causation, Dr Guirgis offered a detailed explanation of the relationship between Mr Parsa’s employment and the injury to each body part by reference to particular duties. For example, with respect to the lumbar spine, he cited “static overloading resulting from sustained contraction” and “dynamic overloading” from repetitive movements of repetitive bending, lifting and heavy lifting. He described the weakening of shoulder muscles, and “mechanical fatigue loading of tendons and ligaments” resulting in collagen fibre failure in the elbows, and repetitive “eccentric loading” especially when the knee is forced in flexion and rotation while weight-bearing”.
36. Dr Guirgis described the event on 8 April 2019 when Mr Parsa lifted a heavy tyre on his own as “the straw that broke the camel's back and the underlying traumatic pathology was building up over since early 2018”.
37. Dr Guirgis considered Mr Parsa to be “totally unfit for work at the present stage” and “totally and on the balance of probabilities permanently unfit for his full pre-injury duties.” With retraining, including English classes, he would “eventually” be fit for suitable duties.
38. Dr Guirgis concluded that Mr Parsa’s employment “was and remained to be a substantial contributing factor” to the injuries described above. In the body of his report, he assessed a total of 21% whole person impairment, comprising:
- | | |
|-----------------------|----|
| Cervical spine | 5% |
| Lumbar spine | 6% |
| Left upper extremity | 6% |
| Left lower extremity | 2% |
| Right upper extremity | 1% |
39. For reasons which are not clear, in the final part of his report where he reproduced his assessments in table form, Dr Guirgis found 21% whole person impairment including 2% for the right lower extremity. As there is no other reference in his report to the right lower

extremity, and no apparent basis for the percentage of whole person impairment assigned, it can only be concluded that this was an error on his part. It is worth nothing in passing that the original claim form refers to *knee* (singular).

Report of Dr Wallace

40. Dr Raymond Wallace, orthopaedic surgeon, saw Mr Parsa for assessment on 8 October 2019. He noted that Mr Parsa's duties "included changing gearboxes in motors and carrying out maintenance on motor vehicles".
41. Dr Wallace took a history that, on 8 April 2019, Mr Parsa had to remove a heavy car motor, repair it and then replace it in the vehicle. At the end of the job, he put the tyres back on and finished his shift. He noted the onset of lumbar spinal pain when he went home and sent a text message to his manager. The next day he went to his local doctor, Dr Omer, complaining of lumbar spinal pain. Dr Wallace noted that Mr Parsa had a previous episode of lumbar spinal pain in May 2018 (actually April 2018) when he was taken by ambulance to Westmead Hospital.
42. Dr Wallace reported that Mr Parsa had noted "an overall reduction in the level of pain at his lumbar spine since his symptom onset in April 2019". He presently complained of "a constant aching pain at the lumbar spine at the L3, L4 and L5 spinous processes with no radiation to his buttocks or legs". The pain previously radiated intermittently to the lateral aspect of the right thigh to the level of the knee. He recorded that Mr Parsa's lumbar pain was "worse on forward flexion, bending or twisting movements or any range of movement" and was relieved by rest or lying down. He complained of stiffness in his lumbar spine. Dr Wallace noted "no paraesthesia, numbness or weakness at his lower limbs."
43. Dr Wallace reported that Mr Parsa noted "no other current symptoms related to his work incident on 8 April 2019." He recorded ranges of movement in the lumbar spine but did not specify whether they were reduced. He noted mild tenderness at L5, and that MRI and plain films had shown mild broad based disc bulges at L4/5 and L5/S1 in May 2018, and mild osteoarthritis and similar disc bulges in May 2019. He noted an MRI of the cervical spine in July 2019 and a bone scan in July 2019. An MRI of the left knee in September 2019 showed no abnormality.
44. Dr Wallace diagnosed Mr Parsa as having had a minor musculoligamentous strain of the lumbar spine on 8 April 2019 and an aggravation of pre-existing multilevel degenerative lumbar spondylosis.
45. As to causation, Dr Wallace said Mr Parsa's work-related lumbar spinal injury of 8 April 2019 had resolved. At that time he had suffered a "minor musculoligamentous strain of the lumbar spine and aggravation of pre-existing multilevel degenerative lumbar spondylosis" which would have settled within two months of the incident.
46. Dr Wallace said Mr Parsa had "noted no specific incident at work on 8 April 2019 which caused his pain" and he had no evidence of ongoing disability at his lumbar spine on clinical examination at the time of the assessment. There was no acute pathology in the lumbar spine on the MRI carried out on 23 May 2019, some six weeks after the incident.
47. In Dr Wallace's opinion, Mr Parsa's work-related lumbar spinal injury had resolved, and any residual symptoms were due to pre-existing multilevel degenerative lumbar spondylosis seen on MRI investigation in May 2018. His employment was not a substantial contributing factor to any current lumbar spinal condition.
48. Dr Wallace reported that Mr Parsa complained of no other symptoms in relation to his work incident of 8 April 2019. His condition had stabilised and he was fit to resume pre-injury duties without restriction. He had 0% whole person impairment of the lumbar spine.

49. In response to questions put to him by the respondent's solicitor, Dr Wallace stated that Mr Parsa had not suffered a disease of gradual process. Asked whether any injured body parts were the result of a frank injury on 8 April 2019 or the nature and conditions of his employment, Dr Wallace said he "complained only of lumbar spinal symptoms at the time of review He noted no other symptoms in relation to his work shift of 8 April 2019 or the nature and conditions of his employment prior to that date."
50. Dr Wallace was asked to provide his assessment of whole person impairment in relation to the cervical spine, lumbar spine, and upper and lower extremities resulting due to the nature and conditions of employment. He was asked the same in relation to a frank injury. Dr Wallace answered that there was no whole person impairment of the lumbar spine, and Mr Parsa "complained of no other symptoms related to this incident".

Priority Medical Centre

51. Dr Mohammad Omer was Mr Parsa's general practitioner from 2013. His clinical notes from 10 December 2013 to 18 November 2019 are before the Commission. The first time Mr Parsa attended at his practice after 8 April 2019 was on 15 April 2019 when Dr Iyer's notes show he was having some psychological difficulties. There is no reference to any physical condition.
52. On 16 April 2019, Dr Omer recorded the reasons for Mr Parsa's visit as "back pain" and he noted "lower back pain after [lifting] tyre" and "tend++" (probably "tender"). On 17 April 2019, Dr Hallani recorded a similar complaint and Mr Parsa's request for a referral to a physiotherapist.
53. There are further references to lower back pain on 17 June 2019, 16 September 2019 and 28 October 2019, and several to a recurrent ankle injury, but no reference to any of the other claimed injuries, even though Mr Parsa saw Dr Omer or another doctor at the Centre several times each month through to November 2019.

Workers Doctors

54. Progress notes from Workers Doctors show Mr Parsa saw Dr Calvache-Rubio on 26 April 2019 for "an injury to Neck/Back/Elbow/Knee". In what appears to be the text of a letter, possibly to solicitors, Dr Calvache-Rubio says Mr Parsa reported that while at work he suffered a neck, back, elbow and knee injury from repetitive heavy lifting, bending and twisting at work . Dr Calvache-Rubio noted he had back pain on 13 [sic] April 2018 after work and returned to pre-injury duties after a week off work. He stop working on 8 April 2019 "due to severe pain". Under "symptomatology", he noted neck pain and stiffness radiating to left shoulder, bilateral elbow pain, right elbow clicking, upper and lower back pain radiating to right hip and leg, bilateral knee pain, and left knee giving way.
55. In the same correspondence, Dr Calvache-Rubio stated that, from his understanding of Mr Parsa's duties as a mechanic, it would be "reasonable to conclude that the mechanism of injury was the direct result of performing those specified tasks". He said the history given was "consistent with employment being the main contributing factor to the injury". He had no evidence of any alternate mechanism of injury.
56. Clinical notes throughout subsequent months show complaints at various times of upper and lower back pain, neck pain with left arm numbness and pain, left shoulder pain, right elbow pain, right leg pain and left knee pain.

57. On 24 June 2019, Dr Chatwin Lee certified Mr Parsa had no capacity for employment to 15 July 2019 by reason of injuries to his neck, back, elbow and knee “from repetitive heavy lifting bending and twisting at work” on 8 April 2019. Certificates in the same terms were issued by Dr Joshua Lee on 8 July, 27 July and 5 August 2019, by Dr Sebastian Calvache-Rubio on 19 August 2019, and by Dr Lee on 18 November 2019.
58. On 2 March 2020, Dr Eric Lim reported that, from what he understood of Mr Parsa’s duties, it was reasonable to conclude that “the mechanism of injury was the direct result of performing those specified tasks” and the history he gave was consistent with employment being the main contributing factor to the injury. In conclusion, he said Dr Wallace’s opinion that Mr Parsa’s back condition has resolved was inconsistent with his finding that Mr Parsa still reported symptoms in his lower spine. He referred to Dr Khong’s opinion and report of ongoing symptoms, and concurred with his opinion that Mr Parsa could require spinal fusion in future.

Dr Khong

59. The Workers Doctors notes include what appears be the text of a letter dated 21 June 2019 from Dr Peter Khong, treating neurosurgeon. He recorded that Mr Parsa presented with lower back pain and right leg pain after lifting a tyre and twisting to put it back on a car on 8 March [sic] 2019. He noted the “same thing happened” around March 2018 with “just lower back pain”. Dr Khong noted the MRI on 23 May 2019 and said the degenerative changes “could be the source of some of his back pain”.
60. The notes include a further report from Dr Khong on 19 July 2019 with similar observations.
61. On 12 February 2020, Dr Khong reported to Dr Calvache-Rubio that Mr Parsa presented that day with lower back pain and right leg pain, neck and left arm pain. On 19 July 2019 he had back pain, no significant leg pain, occasional right thigh pain, and worsening pain and clicking in his neck. He had pain in the left elbow. On 8 November 2019, he had ongoing severe lower back pain, and his neck pain was worse. He had explained the option of spinal fusion to Mr Parsa but wanted him to continue with “non-operative modalities”. Regarding his neck pain, Mr Parsa did not have a “clear pain generator on his MRI cervical spine” and he was waiting approval for nerve conduction studies and “?ulnar neuropathy”.

Westmead Hospital

62. Westmead Hospital notes from 15 April 2018 show that Mr Parsa presented with back pain. He “was at work on Friday and lifted something heavy and felt back pain radiating sharp electric shock like pain down both legs up to knees – worse on the right”. Mr Parsa reported he had lower back pain in the past with work but “usually improved after 1-2 days and the pain is never this bad”.

The applicant’s submissions

63. Mr Beran’s submissions are summarised as follows.
64. Mr Parsa has provided a statement describing injury to his neck, back, left shoulder and elbow, right elbow and left knee. His pain significantly increased on 8 April 2019 when lifting a tyre. His duties were heavy and repetitive. He explains the slight delay on going to his doctor. He continues to have symptoms and pain in those body parts.

65. The best evidence of Mr Parsa's duties is the ReCare report dated 12 June 2019 which describes his duties in detail, including the 80% which were "medium to heavy", consistent with Mr Parsa's statement. The report speaks for itself.
66. Mr Parsa saw Dr Omer complaining of back pain, at the very least, on 16 April 2019. He subsequently attended on the Workers Doctors practice whose clinical records show he attended on Dr Calvache-Rubio on 26 April 2019, not long after he went off work.
67. We do not know why Mr Parsa went to Workers Doctors but we know the practice specialises in workplace injuries, and he attended there not long after he went off work. He continued to see Dr Omer for other ailments but, for his workplace injuries, he saw Dr Calvache-Rubio. That is not unusual in this jurisdiction. It is true that he complained to Dr Omer on occasions about his lower back but Mr Parsa mainly saw him for other conditions including a recurrent right ankle condition; for all work-related complaints he saw Workers Doctors.
68. Dr Calvache-Rubio took a history and found symptomatology consistent with Mr Parsa's claim about injury to his various body parts. Mr Parsa complained of ongoing and continuous pain, at least through to August 2019 when the Workers Doctors notes end.
69. On 2 March 2020, Dr Lim reported that it was reasonable to conclude that the mechanism of injury was the direct result of performing his duties as a mechanic, and the history was consistent with employment being the main contributing factor to the injury. Dr Lim refers to the various scans and to what he considers an inconsistency in Dr Wallace's report.
70. Dr Khong provided reports of several reviews, and Mr Parsa's complaints of ongoing lower back and neck pain. He identified ongoing lower back pain with "radiation globally down both legs" reflecting, in Mr Beran's submission, Dr Khong's neurological point of view.
71. Medical certificates from Workers Doctors refer specifically to injuries to the neck, back, elbow and knee "from repetitive heavy lifting, bending and twisting at work".
72. With respect to Dr Guirgis' reports, Mr Beran submits that he took a history, noting the previous injury in 2018, and of worsening condition until the "tyre incident". Dr Guirgis provides diagnoses with respect to each body part. He provides a detailed opinion as to causation by reference to the physical requirements of Mr Parsa's duties. He provides a detailed and rational explanation for his diagnoses by reference to Mr Parsa's duties. His report is in much greater detail than Dr Wallace. Mr Beran acknowledges that, two months later, Dr Wallace took a history in relation to the lumbar spine only. However, he did not even examine the other body parts, even when specifically asked by his instructing solicitor about them. He simply says Mr Parsa complained of no other symptoms.
73. The difficulty with Dr Wallace's report is that, in fact, Mr Parsa complained to every other doctor of pain in other body parts. Even though specifically asked, he did not turn his mind to the other body parts. It would have made sense for him to at least assess them. His report does not assist in any way other than to say that the lumbar spine has resolved.
74. Common sense points to Mr Parsa's employment as the cause of his injuries.

The respondent's submissions

75. Mr Stockley submissions are summarised as follows.

76. Even allowing that statements are prepared by workers' solicitors, and that Mr Parsa's was prepared with the assistance of an interpreter, his statement of evidence is most unsatisfactory. Even though the statement might not be entirely clear, it is consistent with the respondent's position that Mr Parsa suffered a frank injury on 8 April 2019. The statement is a "lawyer's confection" of the best way to present his claim. In particular, his statement "I do not say there was any specific frank injury" but rather the onset was "gradual and has occurred due to the nature of my duties overtime" is not his own language. Mr Parsa does not say anything that might be expected of someone experiencing a gradual onset due to employment duties.
77. The unreliability of Mr Parsa's statement is underscored further when he states he did not go to his doctor immediately but the pain worsened and he saw Dr Omer who prescribed painkillers. He then states that he was admitted to hospital "on 15 April" from which one would infer he meant 2019 but we know from the Westmead hospital notes that it was in April 2018.
78. It is clear that Mr Parsa's statement was prepared with very little attention to chronology and detail. It is essentially argumentative and of little assistance. Unless corroborated by contemporaneous evidence of the matters in it, it is of little assistance. One has to go to the clinical notes to get a clear picture of what was going on.
79. Mr Parsa had two well-documented complaints of pain in his lower back, in April 2018 and April 2019. Notes from Westmead Hospital show he told the medical officer that he lifted something heavy and felt back pain. It was an acute episode, sufficient to take him to hospital but is missing from his statement except for the reference to attending "in April". The respondent does not dispute an injury associated with his work at that time.
80. The extensive Westmead Hospital notes, most of which have no direct bearing, show that Mr Parsa is no stranger to the hospital system, and he had a regular doctor with whom he seems to have been able to converse. Accounts of various complaints have been recorded carefully. For example, on 21 December 2015, Dr Omer took a history of lifting something heavy in the gym and feeling pain in right elbow so, when troubled by elbow pain, he was more than capable of telling his doctor about it. Records of other medical attendances indicate quite detailed communication between Mr Parsa and his doctor.
81. On 16 April 2018 Mr Parsa saw Dr Osman at Priority Medical Centre complaining of low back pain. Dr Osman noted "no other chronic condition on file". It is clear that, on that occasion what ailed him was an acute episode of back pain, not neck, elbows, or knees or anything else. Thereafter Mr Parsa saw doctors at that same practice for various medical conditions without reference to any orthopaedic complaints. Around the end of 2018, he reported "stress at work" but nothing about any physiological, musculoskeletal or orthopaedic complaints. The same goes for early 2019, up to April 2019.
82. Priority Medical Centre notes on 6 March 2019 refer to a recurrent sprained ankle. The hospital notes show attendance for the same complaint, and x-ray of the right foot and ankle, unrelated to employment. Dr Guirgis does not refer to this ankle in his report, raising questions why not.
83. There is no note of the injuries now complained of when Mr Parsa saw Dr Iyer on 15 April 2019, on a reference to a possible psychological condition. On 16 April Dr Omer recorded lower back pain "after lifting tyre". At that stage Mr Parsa had not been to Workers Doctors and he had not completed a claim form. His only complaint was of back pain. On 17 April 2019, Dr Hallani recorded low back pain and the ankle, but no other body part. Thereafter there is very little reference to the back in notes from Priority Medical Centre. Records on 16 September 2019 show back pain causing a lot of distress, but nothing else.

84. Mr Parsa's only complaint outside of the context of litigation is of injury to his back. Even when seen by Dr Wallace, he complained only of his lower back, consistent with what he told his own doctor.
85. Even if accepted that Mr Parsa now has symptoms in other parts of his body, he has given no account of when and how they arose. His own account is mostly confined to his back, except for the claim form which refers to injuries to the "lower back, neck, knee". The claim form appears to have been completed after he attended Workers Doctors at which point other body parts emerge in a medico-legal context.
86. Dr Khong's report on 12 February 2020 refers to the history taken on 21 June 2019 that Mr Parsa hurt his lower back. There was no complaint of any other body part. On 19 July 2019, the back pain had improved, and Dr Khong noted "also complained of neck pain" and some left elbow pain and ongoing back pain, three months after the date of injury. Dr Khong said there was no clear pain generator of the neck pain and his report sheds no probative light on the pathology of the neck condition.
87. Dr Guirgis may have given a great deal of detail as to how his diagnoses can be related to a patient's work but he doesn't provide a coherent, credible and persuasive history about the onset of the various symptoms complained of. He says Mr Parsa gave a history of reporting a range of symptoms on 8 April 2019 but there is no evidence that he did complain of them. The first report was of lower back pain some two weeks later, and Dr Omer's notes are devoid of anything other than back pain. The factual basis for Dr Guirgis' opinion is not made out, and it is of little value.
88. Dr Guirgis does no more than speculate as to the potential causal connection between Mr Parsa's employment and his various injuries.
89. The ReCare report sets out Mr Parsa's duties but it needs to be considered in context and in light of Mr El-Hossein's statement. There is no doubt the work was physical and involved stretching and lifting but no one was required to lift a gear box unassisted and no tyres were lifted above shoulder height.

Reply

90. In reply, Mr Beran submits that Mr Parsa's statement cannot be criticised as to particular words because it was prepared for the purposes of litigation and with an interpreter.
91. Dr Guirgis says what happened on 8 April 2019 was the straw that broke the camel's back, which explains why Mr Parsa had previously only seen doctors about his lower back. The other body parts all came to the fore on 8 April 2019. As to lack of evidence about onset, there were no symptoms great enough to take him to a doctor except for his lower back but, when they did, they were still all due to nature and conditions.
92. Mr Hossein says there was no heavy lifting but the independent ReCare report shows there was medium to heavy lifting, and should be preferred to the biased opinion of the business owner.

Consideration

93. There is no dispute that Mr Parsa sustained injury to his lumbar spine on 8 April 2019. The respondent contends that the way in which his claim has been framed, and the evidence, indicates that it was by way of a frank injury. Mr Parsa contends it was the result of the nature and conditions of his employment and, moreover, that he sustained the other injuries complained of.

94. I have to consider Mr Parsa's claim as it has been put before me, that is, that the duties of his employment with the respondent were repetitive and heavy, that what occurred when he lifted a heavy tyre above his shoulders on 8 April 2019 was, in Dr Guirgis' words, "the straw that broke the camel's back" and that it brought his other conditions "to the fore".
95. There are a number of difficulties with Mr Parsa's evidence. His statement is unsatisfactory in that it is brief and amounts largely to assertions without any detailed account of the history of his injuries. It is fair to say, as Mr Barnes submits, that it is not in his own words and has the appearance of being crafted with an eye to compensation. However, that is not to say it necessarily undermines his credibility.
96. I think some latitude should be given to a person whose first language is not English and whose statement is prepared with the assistance of an interpreter. The essentials of his claim, as I read the statement, are that his duties were heavy and repetitive, the onset of pain was gradual, and it "increased significantly" on 8 April 2019. At the time of his statement in December 2019, he had pain in his lower back, pain in his neck radiating into his shoulder, and in his knees, in particular his left knee (he does not specifically refer to the right knee).
97. There is no dispute that Mr Parsa's duties were heavy and repetitive. There is no challenge to the ReCare report, the information for which was provided by Mr Parsa's supervisor. It describes 80% of his duties as "medium to heavy" even when "using engine hoist and gear box stand to lift engine and gear boxes out of car"
98. In his claim form, Mr Parsa described the injury as occurring when "Changing tyer [sic], Lifting the tyer above the shoulder".
99. The Investigation report includes Mr El-Hosseini's statement that Mr Parsa would "never be required to lift a tyre above shoulder height." He said there was no heavy lifting in the workshop and he referred to the equipment available for that purpose and the investigator noted a range of lifting devices throughout the workshop for staff to use. Mr El-Hosseini acknowledged that there "may be some bending and twisting in order to do normal motor mechanic work."
100. Dr Guirgis took a history that Mr Parsa was injured "after lifting a very heavy tyre on his own without using any mechanical device". Dr Wallace took a slightly different history, describing his duties that day more generally, but still referring to "one task that day". On 16 April 2019, Dr Omer noted "lower back pain after [lifting] tyre".
101. I am not persuaded that Mr Parsa's statement in his claim form that he was lifting a tyre *above* shoulder height seriously undermines his credibility. Leaving aside the possibility of inaccuracy due to language difference, the Recare report shows duties including lifting tyres up to 20 kilograms at chest or *head* level. As I understand the ReCare report, lifting devices were for engines and gearboxes rather than tyres.
102. I have difficulty with the fact that, apart from his unrelated ankle condition, the only complaint Mr Parsa made to Dr Omer after 8 April 2019 was of back pain. Notes of his first visit, on 15 April 2019, make no mention of back pain. There are notes of back pain on subsequent visits through to November 2019 but the only other complaint recorded was of the right ankle. In contrast, by 26 April 2019, Mr Parsa was complaining to Workers Doctors of pain in his neck, back elbow and knee and, by 24 June 2019, he was certified as having no capacity for employment.
103. Against that, in the injury claim form, Mr Parsa cited injury to his lower back, neck and knee. Although it is not clear from the form, it appears it was completed before he saw Workers Doctors, although that does not explain why he referred to Dr Lim and his nominated treating doctor.

104. Mr Beran submits that it is common for workers to see a doctor experienced in compensation matters about their injuries. Whether that is Mr Parsa's explanation I cannot know.
105. While Mr Parsa's evidence raises questions, I do not think they are necessarily answered against him.
106. Turning to the medical reports, Dr Guirgis and Dr Wallace both refer to documentation provided to them but neither makes clear what it comprised, in particular whether it included the ReCare report with the detailed description of Mr Parsa's duties.
107. Dr Wallace described Mr Parsa's duties simply as "[including] changing gearboxes in motors and carrying out maintenance on motor vehicles". He had some understanding of what had occurred because he diagnosed a "minor lifting strain" in the course of his duties on 8 April 2019. It is not clear why Dr Wallace recorded that Mr Parsa did not cite any particular incident on that day.
108. It appears that Dr Guirgis either had a better understanding from Mr Parsa of his duties, or he turned his mind more carefully to what they could have been. It appears he had Mr Parsa's statement because he refers to the incident on 8 April 2019 in those terms. He considers causation by reference to the requirements of the duties as described in the ReCare report, such as "dynamic and static overloading" from working with the spine in a fixed position, and repetitive bending and lifting. Given that Mr Parsa actually performed duties of that nature, I do not accept Mr Barnes' submission that Dr Guirgis' report amounts to speculation.
109. Dr Wallace reports that the only body part Mr Parsa complained of on 8 October 2019 was his lower back. In contrast, two months earlier on 14 August 2019, Dr Guirgis recorded a range of complaints. Mr Parsa's treating doctor certified him incapacitated throughout June to November 2019 citing neck, back, elbow and knee injuries. As well as back pain, Dr Khong, the treating neurosurgeon, noted worsening neck pain on 19 July 2019, and on 8 November 2019 when he also noted "?ulnar neuropathy". In February 2020, Dr Khong noted lower back pain and right leg pain, and neck and left arm pain.
110. Either Mr Parsa's complaints to Dr Guirgis, Dr Khong and the Workers Practice doctors were not genuine or they misdiagnosed him, or Dr Wallace's report is lacking. I recognise that this still leaves why the Priority Medical Centre notes show complaints of lower back pain only.
111. Considering that the insurer's solicitors asked for Dr Wallace's assessment of whole person impairment in relation to lumbar spine, cervical spine, "upper extremities" and "lower extremities", I accept Mr Beran's submission that it would have been reasonable for him to assume the questions were asked for a reason, and for him to at least turn his mind to them. It does not appear that he did so. It does not appear that he asked Mr Parsa anything about them. Had he done so, his report might be expected to say something along the lines that Mr Parsa denied any other injuries. It says only that Mr Parsa did not complain of them. That may reflect Mr Parsa's true condition, or Dr Wallace's questioning.
112. Considering the medical evidence as a whole, I consider it more likely that Dr Wallace failed to turn his mind fully to Mr Parsa's injuries. I prefer Dr Guirgis' opinion because his examination appears to have been thorough and his findings and explanation as to causation consistent with Mr Parsa's actual duties. I do not think anything of substance can be drawn from the fact Dr Guirgis did not record ankle pain given that Mr Parsa was seeing Dr Omer for that condition and it was not part of his claim.
113. The fact that Mr Parsa did not complain to Dr Omer of any other injuries raises questions but does not outweigh that he did complain to the Workers Doctors practitioners, Dr Guirgis and Dr Khong, all of whom considered he had those other injuries.

114. The Court of Appeal has cautioned against placing too much weight on the clinical notes of treating doctors whose primary concern was treatment. In the Court's view, the notes rarely, if ever, represent a complete record of the exchange between a patient and a busy general practitioner: see *Davis v Council of the City of Wagga Wagga*¹, *Nominal Defendant v Clancy*² and *King v Collins*³ cited with approval by Deputy President Roche in the Commission in *Winter v NSW Police Force*⁴.
115. The Workers Doctors practitioners found injuries to Mr Parsa's lower back, neck, left shoulder and elbows, and "bilateral knee pain" with the "left knee giving way". Dr Khong dealt with the lower back, neck and left elbow. Dr Guirgis found work-related injuries to the lower back, neck, left shoulder, left knee and both elbows. As set out at [39] above, his report does not support injury to the right knee. Dr Guirgis is an orthopaedic specialist and I accept his opinion. A single reference to "bilateral knee pain" does not support injury to the right knee as well.
116. Mr Parsa bears the onus of proof. I must feel an actual persuasion of the existence of the facts on which he relies: *Nguyen v Cosmopolitan Homes*⁵ cited by President Keating in *Department of Education & Training v Ireland*⁶. See also *Malec v JC Hutton Pty Limited*⁷ where Deane, Gaudron and McHugh JJ said at 642-643:
- "A common law court determines on the balance of probabilities whether an event has occurred. If the probability of the event having occurred is greater than it not having occurred, the occurrence of the event is treated as certain; if the probability of it having occurred is less than it not having occurred, it is treated as not having occurred."
117. Considering the evidence as a whole, I find it more probable than not that Mr Parsa sustained injuries to his lower back, neck, left shoulder, left knee and both elbows as a result of his employment with the respondent (deemed date 8 April 2019).

CONCLUSION

118. For these reasons, I find that Mr Parsa sustained injuries to his lumbar spine, cervical spine, left shoulder, left knee and both elbows as a result of his employment with the respondent (deemed date 8 April 2019).
119. The matter is remitted to the Registrar for referral to an AMS for assessment of the degree of permanent impairment to the applicant's lumbar spine, cervical spine, left upper extremity (shoulder and elbow), right upper extremity (elbow) left lower extremity (knee) resulting from the injury deemed to have occurred on 8 April 2019.

¹ *Davis v Council of the City of Wagga Wagga* [2004] NSWCA 34; 4 DDCR 358

² *Nominal Defendant v Clancy* [2007] NSWCA 349

³ *King v Collins* [2007] NSWCA 122

⁴ *Winter v NSW Police Force* [2010] NSWCCPD 121

⁵ *Nguyen v Cosmopolitan Homes* [2008] NSWCA 246

⁶ *Department of Education & Training v Ireland* [2008] NSWCCPD 134

⁷ *Malec v JC Hutton Pty Limited* (1990) 169 CLR 638