

WORKERS COMPENSATION COMMISSION

CERTIFICATE OF DETERMINATION

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

Matter Number: 2763/20
Applicant: Andrew Morcos
Respondent: Deosa Enterprises Pty Limited
Date of Determination: 5 August 2020
Citation: [2020] NSWCC 267

The Commission determines:

1. The applicant has failed to establish that he has had no current work capacity from 12 January 2020 to the date of this decision.

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

John Isaksen
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 ISAKSEN, ARBITRATOR, WORKERS COMPENSATION COMMISSION.

L Golic

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



STATEMENT OF REASONS

BACKGROUND

1. The applicant, Andrew Morcos, sustained an injury to his right knee on 23 May 2017 whilst in the course of his employment with the respondent, Deosa Enterprises Pty Limited.
2. The applicant sustained a consequential condition to his right elbow when his injured right knee gave way on 4 December 2017 and he fell on his right arm, causing a triceps tendon avulsion of the right elbow and the need for surgery to repair the avulsion.
3. The applicant has also sustained a secondary psychological injury, which has been diagnosed as an adjustment disorder, due to ongoing chronic pain and disability as a result of the injury sustained on 23 May 2017.
4. The applicant received 130 weeks of weekly benefits of compensation as a result of the injury sustained on 23 May 2017, pursuant to sections 36 and 37 of the *Workers Compensation Act 1987* (the 1987 Act). The insurer of the respondent, GIO, informed the applicant by letter dated 29 November 2019 that weekly payments of compensation would end on 11 January 2020 due to the effect of section 38 (3) of the 1987 Act.
5. The applicant had not returned to at least 15 hours of work per week and was therefore not entitled to weekly payments of compensation after the first and second entitlement periods provided for in sections 36 and 37 of the 1987 Act. The applicant claims that he is entitled to weekly payments of compensation after the end of the second entitlement period because he has had no current work capacity since 12 January 2020 and is likely to continue indefinitely to have no current work capacity.

ISSUES FOR DETERMINATION

6. The parties agree that the following issue remains in dispute:
 - (a) Whether the applicant has had no current work capacity since 12 January 2020 and is likely to continue indefinitely to have no current work capacity (sections 32A and 38 (2) of the 1987 Act).

PROCEDURE BEFORE THE COMMISSION

7. The parties attended a conference and hearing on 30 July 2020. 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.
8. Mr Morgan appeared for the applicant, instructed by Mr Naddaf. Mr Beran appeared for the respondent, instructed by Mr Lott.
9. The hearing was conducted by telephone in accordance with the protocols set out by the Commission as a result of the coronavirus pandemic.

EVIDENCE

Documentary evidence

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

- (a) Application to Resolve a Dispute and attached documents;
- (b) Reply and attached documents;
- (c) Application to Admit Late Documents filed by the applicant on 22 July 2020, and
- (d) Application to Admit Late Documents filed by the respondent on 28 July 2020

Oral evidence

11. There was no application to cross examine the applicant or to adduce oral evidence.

FINDINGS AND REASONS

The applicant's evidence

12. The applicant has provided a statement dated 15 May 2020. The applicant states that he left school at 17 years of age and entered the electrical trade. He states that in or around 2015/2016 he became self-employed as an electrician with the respondent and worked 50 to 60 hours per week.
13. The applicant states that around December 2017, when he injured his right elbow as a consequence of the injury to the right knee, he was having ongoing distress due to his injuries and began to experience low self-esteem and self-confidence, anxiety, frustration, irritability, mood swings and depression. He states that he was becoming increasingly reliant on narcotic medication and was regularly taking Endone, Targin and Tramadol. He states that he and his wife separated due to the financial pressures and stress resulting from his work injury.
14. The applicant states that his general practitioner had been Dr Chugh, but in August 2019 the applicant began to consult Dr Lim. He states he was referred by Dr Lim to Dr Abdal Khan, psychiatrist. He states that following his consultations with Dr Khan, he began to see improvements in his mental state, including help in stopping his reliance on heavy narcotics.
15. The applicant states that his entire working career has been in occupations that require physical endurance and labour, and that he would not be physically capable of returning to work due to ongoing pain in his right knee, right elbow and right ankle. The applicant also states:
- “Furthermore, I do not believe I would be able to return to employment due to my psychological symptoms. Since my injury, I have ongoing anxiety, depression, lethargy, low motivation and low energy. I have also experienced a decline in my ability to concentrate and an impairment in my short-term memory. As a result, it would be extremely difficult for me to complete work duties, meet new people and work in an unfamiliar work environment even in a sedentary role (for which I don't have experience).”
16. The applicant states that he has failed multiple medical examinations for prospective employers and has been told by potential employers that he would be a liability.

The medical evidence

17. The applicant's general practitioner following the work injury was Dr Chugh.
18. The applicant was treated by Dr Kirsh, orthopaedic surgeon, and Dr Rahme, orthopaedic surgeon, for the injury to his right knee and consequential condition affecting his right elbow.

19. On 13 May 2019, Dr Chugh issued a Certificate of Capacity which certified the applicant as having capacity for five hours of work per day for five days per week, with a lifting limit of up to 10 kilograms.
20. In a report dated 5 August 2019, Dr Kirsh records that the applicant has applied for a few jobs but has failed the medical each time. Dr Kirsh records ongoing problems that the applicant is having with his right knee, right ankle and right elbow.
21. In a report to GIO dated 7 August 2019, Dr Kirsh writes:

“...Andrew was reviewed on 2.8.2019 and I had a telephone conversation with Dr Chugh today on 7.8.2019. We agreed that with his combination of problems he is not fit to be work and this is shown by the fact that the jobs that he has applied for and they have been happy for him to start, he has failed to qualify as he fails the medical. He is not fit to work, as every time he does things it exacerbates his problems.”
22. An entry by Dr Chugh in his clinical notes on 7 August 2019 reads: “spoke to Dr Kirsh and he says unfit to do any work for 3-6 months.”
23. The applicant changed his general practitioner in August 2019 from Dr Chugh to Dr Lim.
24. The applicant attended Dr Poplawski, at the request of his solicitors, and Dr Poplawski has provided a report dated 18 October 2019. Dr Poplawski found limited range of motion in the right knee but observed the applicant to walk with complete straightening of the right knee. Dr Poplawski also found some limited range of motion in the right elbow but observed the applicant using an elbow crutch in the right hand with complete extension of the elbow.
25. Dr Poplawski provides his opinion on the applicant’s fitness for work as follows:

“In my opinion, from the point of view of his orthopaedic duties, Mr Morcos could have been fit to resume light duties on a part-time progressive basis, with the avoidance of heavy lifting and prolonged time on his feet, from about mid to late 2018. Weather he would have managed to return to his usual pre-injury work would have to have been reassessed on the basis of progress thereafter.

Restrictions that would have been best imposed at that time would have been avoidance of heavy lifting, excessive standing and walking, climbing stairs, scaffolding and ladders and crawling into small confined spaces. Mr Morcos is a tall well-built individual and would have more difficulty than average to work under these conditions because of the bending, kneeling and squatting that would be required under these circumstances.”
26. Dr Poplawski also opines that the applicant has had a reasonably good recovery from his injuries and that he is focussed unduly on his residual problems. He considered a psychiatrist or psychologist should be able to assist with a more positive attitude towards his residual physical problems.
27. Dr Kirychenko, a specialist in occupational medicine, provided a report dated 28 January 2020 at the request of the GIO. Dr Kirychenko did not examine the applicant but only provided a report based upon material provided to him. Dr Kirychenko opines that after examining “the vast available data” provided to him that the applicant is unable to return to his previous duties, and that the right knee is deteriorating at an accelerated rate because of the work injury.

28. Dr Kirychenko opines that the right knee symptoms alone would restrict most physical activities that the applicant was previously doing, which includes an inability to walk, stand, climb ladders or stairs, crouch or kneel.
29. Dr Kirychenko refers to the applicant having chronic pain and taking large quantities of narcotic analgesics which would impede his cerebral function.
30. Dr Kirychenko refers to a psychiatric report (presumably from Dr Khan) which indicates that the applicant has considerable psychiatric disability and needs to overcome this before any retraining or return to work in an administrative or supervisory capacity could be considered.
31. Dr Kirychenko concludes:

“Once his psychiatric condition has been improved or resolved then he might be able to do some light duties with some retraining to use his electrical skills and knowledge or perform some other type of work that he could do. This would have to be assessed by appropriate vocational assessments to see what he would be capable of doing at a later stage. At this stage he is not fit to return to work as a result of his right knee injury but in the future I believe that he will attain some capacity to work on some light appropriate duties but he would be permanently unfit to return to his pre-injury duties.”
32. Dr Abdal Khan, consultant psychiatrist, has provided a report dated 30 January 2020. Dr Khan writes that he initially saw the applicant on 4 October 2019. He records the applicant having a history of aberrant prescription opioid use following his injury but was now only taking Targin each night.
33. Dr Khan records that due to the work injury the applicant has experienced a deterioration in his mental state characterised by depressive and anxious cognitions, including irritability, low mood, anxious ruminations, sleep disturbance and feelings of hopelessness and worthlessness.
34. Dr Khan diagnoses a chronic adjustment disorder with mixed disturbance of emotions and conduct, as well as opioid use disorder as a sequelae of the work injury and associated chronic pain.
35. Dr Khan opines that the predominant barrier to the applicant’s recovery is his psychological conditions. He opines that it is unlikely that the applicant will be able to return to work within the next year, and even then it is unlikely that the applicant will be able to manage full time work.
36. The applicant attended Dr Teoh, consultant psychiatrist, at the request of his solicitors, and Dr Teoh has provided a report dated 13 March 2020.
37. Dr Teoh records that the applicant reported depressive and anxiety symptoms and that the applicant had been preoccupied with negative thoughts. Dr Teoh records that on examination he found the applicant’s cognitive functions were intact and there was no evidence of short or long term memory impairment.
38. Dr Teoh diagnoses a chronic adjustment disorder with depressed mood. He opines that his condition has been caused by the chronic pain and physical disability which results from the work injury.

39. Dr Teoh opines that the applicant is not able to work at all as a result of his physical and mental conditions. However, in the PIRS category for Employability, Dr Teoh places the applicant in class 3, and states that the applicant is fit for suitable employment. Dr Teoh places the applicant in class 3 for Concentration, Persistence and Pace, and states the applicant has poor concentration and has persistent preoccupation with negative thoughts.
40. There are Certificates of Capacity in evidence which have been issued by Dr Lim and which cover a period from 27 November 2019 to 28 July 2019. All of the Certificates for this period certify the applicant as having no current work capacity. All of the Certificates diagnose the work related injury as:

“Cervical Spine Radiculopathy (NDI: 88 %), C4-7 disc protrusion with C4/5, CS/6 mild foraminal stenosis (MRI); R) Shoulder Strain; R) triceps tendon avulsion repair (12/2017); Lumbar Spine Radiculopathy aggravated (OD1: 88%); R Knee Strain, joint effusion, chondromalacia patella; L) Knee Strain (over compensation), meniscal tear, MCL, ACL tears (MRI); R) Ankle Strain; Chronic pain with psychological distress (K10: 48).”

Relevant legislative provisions

41. Section 38 (1) of the 1987 Act provides that weekly payments of compensation cease after the expiry of the second entitlement period unless the injured worker satisfies what is otherwise provided for in section 38.
42. The parties agreed that the applicant could only receive weekly payments of compensation after 11 January 2020 if he could satisfy the provisions of section 38 (2) of the 1987 Act.
43. Section 38 (2) of the Act provides:

“A worker who is assessed by the insurer as having no current work capacity and likely to continue indefinitely to have no current work capacity is entitled to compensation after the second entitlement period.”

44. Relevant definitions contained in section 32A of the 1987 Act on the issue of the applicant’s capacity for work are the following:

No current work capacity is defined as: “a present inability arising from an injury such that the worker is not able to return to work, either in the worker’s pre-injury employment or in suitable employment”.

Current work capacity is defined as: “a present inability arising from an injury such that the worker is not able to return to his or her pre-injury employment but is able to return to work in suitable employment”.

Suitable employment, in relation to a worker is defined as:

“means employment in work for which the worker is currently suited:

- (a) having regard to:
 - (i) the nature of the worker’s incapacity and the details provided in medical information including, but not limited to, any certificate of capacity supplied by the worker (under section 44B), and

- (ii) the worker's age, education, skills and work experience, and
 - (iii) any plan or document prepared as part of the return to work planning process, including an injury management plan under Chapter 3 of the 1998 Act, and
 - (iv) any occupational rehabilitation services that are being, or have been, provided to or for the worker, and
 - (v) such other matters as the Workers Compensation Guidelines may specify, and
- (b) regardless of:
- (i) whether the work or the employment is available, and
 - (ii) whether the work or the employment is of a type or nature that is generally available in the employment market, and
 - (iii) the nature of the worker's pre-injury employment, and
 - (iv) the worker's place of residence."

Determination

45. For the applicant to succeed with this claim, he must not only establish that he has no current work capacity, but that he is likely to continue indefinitely to have no current work capacity.
46. Mr Morgan submits that the combination of the applicant's physical injuries to the right knee and consequential condition to the right elbow, the ongoing opioid medication that the applicant is taking, and the secondary psychological condition that the applicant has been diagnosed with, means that there has been no suitable employment which the applicant has been suited for since 12 January 2020, and the applicant can therefore be regarded as having no current work capacity.
47. Mr Morgan refers to the application of the term 'suitable employment' in the decision of DP Roche in *Wollongong Nursing Home v Dewar* [2014] NSWCCPD 55 (*Dewar*), where it was said at [59] that suitable employment "must refer to a real job in employment which the worker is suited", and at [63]:
- "the task requires the identification of whether there are any 'real jobs' (*Giankos v SPC Ardmona Operations Ltd* [2011] VSCA 121 at [102]) which, having regard to the matters in sub-s (a) of the definition, the worker is able to do, regardless of whether those jobs are 'available' (to the worker) or are 'of a type or nature that is generally available in the employment market'."
48. I restricted my summary of the medical evidence to the past 12 months. However, there is medical evidence prior to this period which supports a finding that, although the applicant could not return to the full duties required of an electrician, he was capable of engaging in suitable work having regard to the injury to the right knee and condition of his right elbow.
49. In June 2018, Dr Chugh answered an enquiry from Rehabilitation Services that the applicant could work as a customer service manager or electrical training technician.
50. In July 2018, Dr Ian Smith, injury management consultant, found good function in the applicant's right knee and right elbow, and opined that the applicant was fit to work full time but within some physical capabilities set out by an exercise physiologist.

51. In February 2019, Dr Powell, orthopaedic surgeon, opined that the applicant was not fit to return to his full pre-injury duties but recommended suitable duties with instructions to avoid prolonged periods of standing and walking, and repetitive bending, kneeling, squatting, stair or ladder climbing.
52. Although not a medical report, Mr Loe, rehabilitation consultant and psychologist, provided a Vocational Assessment Report dated 14 December 2018, wherein he found the applicant was impaired in his ability to stand, sit, walk, squat and negotiate stairs. However, Mr Loe considered that the applicant was suited to the job of an electrical technician.
53. The Certificate of Capacity issued by Dr Chugh on 13 May 2019 which certified the applicant as having capacity for five hours of work per day for five days per week, with a lifting limit of up to 10 kilograms, was consistent with medical opinion over the previous 12 months which considered that although the applicant could not return to the full duties of an electrician, he was fit to undertake part time work in some suitable employment.
54. In August 2019 Dr Kirsh, in consultation with Dr Chugh, formed the view that the applicant was not fit to work. The entry made by Dr Chugh from that consultation was that the applicant would be unfit for work for the next three to six months. If that evidence on its own were accepted as establishing that the applicant had no current work capacity, then that would take the period of no current work capacity to no further than early February 2020. There is no additional evidence from Dr Chugh or Dr Kirsh after August 2019 which can assist in my determination as to whether the applicant has had no current work capacity since 12 January 2020.
55. There is no adequate explanation from Dr Chugh or Dr Kirsh as to why they considered the applicant was unfit for work for three to six months from early August 2019, particularly given the medical opinions of the previous 12 months, including from Dr Chugh, which considered the applicant had some capacity for suitable employment. There is no explanation from Dr Kirsh as to whether the jobs that he refers to and which he understands the applicant has failed to qualify for, involved essentially physical work or not. The applicant is not able to assist because his own evidence is limited to: "I have failed multiple medical exams that have been conducted by prospective employers." No evidence is provided as to the identity of those prospective employers, and what jobs the applicant was applying for.
56. I appreciate that the opinion provided by Dr Kirsh is made in the context of treatment and the doctor running a busy specialist practice. However, there is no indication as to whether a more comprehensive report was sought from Dr Kirsh. Dr Kirsh would have been in an ideal position to provide an opinion on whether or not the applicant has had no current work capacity since August 2019 as a result of the work injury because he has treated the applicant not only for that injury but also previous problems with both shoulders. Dr Kirsh is likely to have a good understanding of the effect of various physical ailments the applicant has suffered from over the past several years.
57. In the absence of a more detailed explanation from Dr Kirsh, or at least Dr Chugh, as to whether the applicant has had no current work capacity since August 2019, there remains a consistent line of medical opinion from mid-2018 which supports a finding that the applicant would be at least fit for part time sedentary work, despite the ongoing problems he has been having with his right knee and right elbow.
58. The most recent report from a doctor who has actually examined the applicant for his physical injuries is from Dr Poplawski, being in October 2019. The opinion of Dr Poplawski that the applicant would be fit for light duties on a progressive basis, with the avoidance of heavy lifting and prolonged time on his feet, is consistent with those opinions which I have already referred to, which opine that the applicant is fit for some forms of light duties work.

59. The medical opinions since October 2019 in regard to the applicant's physical injuries are of little assistance. Apart from changing the dates on the Certificates of Capacity, the contents of those certificates from Dr Lim remain the same for over six months, without any indication of a change in the treatment or progress of the applicant's injuries. The certificates list injury to the neck and right shoulder, when there is no contemporaneous evidence to support those body parts being injured on 23 May 2017.
60. President Keating in *DHL Exel Supply Chain (Australia) Pty Ltd v Hyde* [2011] NSWCCPD 22 (*Hyde*) said in regard to medical certificates at [93]:
- “The certificates are of little probative value in the absence of a medical report to explain them or to set out the history on which they are based: *Greif Australia Pty Ltd v Ahmed* [2007] NSWCCPD 229; 6 DDCR 461.”
61. The certificates of Dr Lim are of little probative value in the determination of this dispute and I have no confidence in placing any reliance on these certificates when determining whether the applicant has had no current work capacity since 12 January 2020.
62. The opinions expressed by Dr Kirychenko also do not assist me. Dr Kirychenko provides a report that is quite helpful to the applicant, but it is based upon a review of material and not an examination of the applicant. He opines that the applicant's right knee is deteriorating without providing an explanation for this or whether that deterioration relates to the applicant's work injury. It is an opinion based on material provided to him and not from his own interrogation or examination of the applicant.
63. Dr Kirychenko's opinion regarding the applicant's restricted work capacity is at least partly based upon his record that the applicant was taking large quantities of narcotic analgesics, and that this would be impeding his cerebral function, yet this is not supported by other evidence. In July 2019, Dr Chugh writes to a pharmacist that the applicant had ceased taking Endone in September 2018 and Tramal in May 2019. In January 2020, Dr Khan records the applicant taking Targin each night.
64. In my view, Dr Kirychenko's opinions, at least in regard to the applicant's physical injuries, do not assist a finding that the applicant has had no current work capacity since 12 January 2020.
65. In *Dewar*, DP Roche said at [62] that the determination of what is suitable employment for an injured worker “is a practical exercise” having regard to the definition of ‘suitable employment’ in section 32A of the 1987 Act. That includes having regard to the nature of the worker's incapacity and the worker's age, education, skills, and work experience.
66. The applicant states that he has always worked in physically demanding jobs and would not be able to work in a sedentary role. However, there is other evidence which contradicts these assertions.
67. The applicant was running his own business at the time he sustained injury, and I consider it reasonable to infer that this would have involved some rudimentary management skills. More significantly, the report from Mr Loe records that the applicant owned and operated a service station from 2003 to 2016, with duties which included customer service, managing finances and stock control. That report also records the applicant completing two diplomas and a certificate at TAFE between 1998 and 2001.
68. The evidence of past work experience and education, along with the medical evidence which I have accepted in regard to the applicant's physical injuries, leads me to conclude that at the very least the applicant could do a few hours of work for a few days per week in some menial clerical or administrative job.

69. The duties of a level 1 employee under the Clerks – Private Sector Award 2010 can include maintenance of basic records; filing collating and photocopying; and reception duties. I conclude from the evidence which I have summarised that the applicant would be able to undertake those duties for at least a few hours per day for a few days per week.
70. It is also likely that the skills which the applicant acquired in managing a service station means that the applicant has the capacity to undertake at least some limited hours of work per week in retail management. The tasks indicative of a Retail Employee Level 4 under the General Retail Industry Award 2010 include management of a defined section and stock control, which from the evidence would be within the applicant's past work experience.
71. Mr Loe in his report in December 2018 records that the applicant considered his sitting capacity was 30 minutes and that he experienced difficulty when transferring from a seated position. However, the jobs which I have referred to would allow the applicant to stand up and move around to relieve the pain and stiffness in his right knee.
72. The determination of whether an injured worker is fit for suitable employment is to be made regardless of whether the work or employment is available, or generally available in the employment market, although there must be a real job which the applicant can perform.
73. I conclude from a review of the evidence that the applicant is at least fit for part time work in basic clerical or administrative work, or basic retail managerial work, despite the ongoing effects of the injury to his right knee and consequential condition affecting his right elbow. The applicant has failed to establish that, as a result of those physical injuries, has had no current work capacity from 12 January 2020.
74. The medical evidence does support a finding that the applicant has suffered a secondary psychological injury, being an adjustment disorder. Dr Khan makes this diagnosis and then opines that the predominant barrier to the applicant's recovery is his psychological conditions.
75. Considerable weight should usually be given to the opinion of a treating specialist given the unique role that doctor has in the diagnosis and treatment of a patient's condition. The applicant has seen Dr Khan on several occasions and credits Dr Khan in improving his mental state.
76. However, Dr Khan does not record his own observations of the applicant's psychological symptoms. He merely records what the applicant says are his symptoms, being irritability, low mood, anxious ruminations, sleep disturbance and feelings of hopelessness and worthlessness. Nor does Dr Khan explain why the applicant could not return to any work within the next 12 months.
77. Although Dr Teoh only sees the applicant on the one occasion, Dr Teoh does record his own observations of the applicant's mental state, which include that the applicant's cognitive functions were intact and there was no evidence of short or long term memory impairment. There is no reference to those same mental elements in the report of Dr Khan.
78. The opinions expressed by Dr Teoh are ambiguous. In his assessment of permanent impairment, Dr Teoh opines that the applicant is fit for suitable duties. However, Dr Teoh also opines that the applicant is not able to work at all as a result of his physical and mental condition.
79. It may be that Dr Teoh considers that it is the combination of the applicant's physical and psychological conditions caused by the work injury in May 2017 that causes the applicant to have no current work capacity. That is the submission made by Mr Morgan to support the applicant's claim. However, I really need more of an explanation than the one line answer given by Dr Teoh.

80. I have already given my reasons as to why I consider the applicant has the physical capacity to undertake at least part time work in basic clerical, administrative or retail management jobs. The findings made by Dr Teoh that the applicant's cognitive functions were intact and there was no evidence of memory impairment, leads me to the conclusion that there is no impediment to the applicant doing that same work, also in a part time capacity, notwithstanding his psychological condition. The poor concentration which Dr Teoh accepts the applicant has, might limit the amount of hours of work that the applicant can do, but not preclude him from such work altogether.
81. The practical exercise of determining whether the applicant has been fit for suitable employment since 12 January 2020 leads me to find that the applicant has not been able to establish that he has had no current work capacity from 12 January 2020 to the date of this decision.
82. Both counsel in their submissions addressed on how the term "likely to continue indefinitely to have no current work capacity" in section 38 (2) of the 1987 Act should be applied.
83. Mr Morgan submits that the way the term should be read and applied is not that the applicant will continue indefinitely to have no current work capacity and never return to the workforce but only that the applicant is likely to have no work capacity which remains indefinite, unless or until there is a change in his circumstances.
84. Mr Beran submits that the term should be applied as to continue forever and to have no end, so that even if I had found that the applicant had no current work capacity for some time after 12 January 2020, the evidence indicates that there will come a time when the applicant will have some work capacity, which operates as a bar to the receipt of any weekly payments after the second entitlement period.
85. However, having found that the worker has failed to establish that he has had no current work capacity from 12 January 2020, it is not necessary for me to determine this issue in the circumstances of this dispute.