WORKERS COMPENSATION COMMISSION

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

Matter Number:	**M1-1975/20**
Appellant:	**Woolworths Limited**
Respondent:	**Eulalia Amate Coppin**
Date of Decision:	**18 December 2020**
Citation No:	**[2020] NSWWCCMA 181**

Appeal Panel:	
Arbitrator:	**Jane Peacock**
Approved Medical Specialist:	**Dr Brian Stephenson**
Approved Medical Specialist:	**Dr Mark Burns**

BACKGROUND TO THE APPLICATION TO APPEAL

1. On 2 October 2020, Woolworth Limited (the appellant) lodged an Application to Appeal Against the Decision of Approved Medical Specialist. The medical dispute was assessed by Dr Tim Anderson, an Approved Medical Specialist (AMS), who issued a Medical Assessment Certificate (MAC) on 4 September 2020.

2. The appellant relies on the following grounds of appeal under s 327(3) of the *Workplace Injury Management and Workers Compensation Act 1998* (1998 Act):

    - the assessment was made on the basis of incorrect criteria,
    - the MAC contains a demonstrable error.

3. The Registrar is satisfied that, on the face of the application, at least one ground of appeal has been made out. The Appeal Panel has conducted a review of the original medical assessment but limited to the ground(s) of appeal on which the appeal is made.

4. The Workers compensation medical dispute assessment guidelines set out the practice and procedure in relation to the medical appeal process under s 328 of the 1998 Act. An Appeal Panel determines its own procedures in accordance with the Workers compensation medical dispute assessment guidelines.

5. The assessment of permanent impairment is conducted in accordance with the *NSW* Workers *Compensation Guidelines for the Evaluation of Permanent Impairment, 4th* ed 1 April 2016 (the Guidelines) and the *American Medical Association Guides to the Evaluation of Permanent Impairment,* 5th ed (AMA 5).

PRELIMINARY REVIEW

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

7. As a result of the Appeal Panel's preliminary review, the Appeal Panel determined that it was not necessary for the worker to undergo a further medical examination because the Appeal Panel was satisfied that the AMS had made an error there was sufficient material before the Panel to make a determination in this matter.

EVIDENCE

Documentary evidence

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

Medical Assessment Certificate

9. The parts of the medical certificate given by the AMS that are relevant to the appeal are set out, where relevant, in the body of this decision.

SUBMISSIONS

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

FINDINGS AND REASONS

11. The procedures on appeal are contained in s 328 of the 1998 Act. The appeal is to be by way of review of the original medical assessment but the review is limited to the grounds of appeal on which the appeal is made.

12. In *Campbelltown City Council v Vegan* [2006] NSWCA 284 the Court of Appeal held that the Appeal Panel is obliged to give reasons. Where there are disputes of fact it may be necessary to refer to evidence or other material on which findings are based, but the extent to which this is necessary will vary from case to case. Where more than one conclusion is open, it will be necessary to explain why one conclusion is preferred. On the other hand, the reasons need not be extensive or provide a detailed explanation of the criteria applied by the medical professionals in reaching a professional judgement.

13. The matter was referred by the Registrar to the AMS as follows:

> "The following matters have been referred for assessment (s 319 of the 1998 Act):
>
> - **Date of injury:** 1997 to 2019 (deemed)
> - **Body parts/systems referred:** (1) Left upper extremity (shoulder)
>   (2) Cervical spine
>   (3) Right upper extremity (shoulder)
> - **Method of assessment:** Whole Person Impairment."

14. The AMS issued a MAC certifying his assessment as follows:

Body Part or system	**Date of Injury**	**Chapter, page and paragraph number in SIRA guidelines**	**Chapter, page, paragraph, figure and table numbers in AMA5 Guides**	**% WPI**	**WPI deductions pursuant to S323 for pre-existing injury, condition or abnormality** (expressed as a fraction)	**Sub-total/s % WPI** (after any deductions in column 6)
Cervical spine	1997 to 2019 (deemed)	Chap 4 P 24	P 392 T 15-05	7%	0	7%
Left upper extremity (shoulder)		Chap 2 P 10	P 476 F 16-40 P 477 F 16-43 P 479 F 16-46	13%	0	13%
Right upper extremity (shoulder)			P 439 T 16-03 P 472 F 16-34 P 474 F 16-37	5%	0	5%
Total % WPI (the Combined Table values of all sub-totals)					**23%**	

15. The employer appealed. There was no compliant on appeal about the assessment of the right upper extremity. The complaint on appeal relates to the cervical spine and left upper extremity assessments. In respect of the cervical spine, there was no complaint about the assessment of DRE II for the cervical spine at 5% WPI. The complaint on appeal relates to the allowance of 2% WPI for impact on ADLs.

16. In summary, the appellant submitted on appeal as follows:

    (a) The AMS made a demonstrable error in the application of Figure 16-46 of the Guides with respect to the left shoulder impairment;
    (b) The AMS made a demonstrable error or determined on the basis of incorrect criteria in his application of impairment relating to the effects of activities of daily living (ADLs); and in the alternative
    (c) The AMS has failed to give adequate reasons to support a finding of 2% WPI for ADLs.

17. In summary, the Respondent conceded that error was made in the assessment for the left upper extremity but maintained the AMS did not err in the assessment of ADLs.

18. The role of the AMS is to conduct an independent assessment on the day of examination. The AMS is required to take a history, conduct a physical examination, review the special investigations, make a diagnosis and have due regard to other evidence and other medical opinion that is before the AMS. The AMS must bring his clinical expertise to bear and exercise his clinical judgement when making an assessment of impairment and make such assessment in accordance with the criteria in the Guides.

19. The AMS took a history of injury consistent with the other evidence and of current symptoms and effect on ADLS as follows:

> **"● Brief history of the incident/onset of symptoms and of subsequent related events, including treatment:**
>
> Mrs Coppin related that just after mid-year 1997 she started experiencing pain, mostly in her left shoulder with a restricted range of movement. She had never experienced anything like this in spite of working for something like 20 years doing a very similar job. The condition gradually deteriorated to such an extent that she was unable to continue at work on one particular occasion and had to leave early.
>
> This came to the attention of the Store Manager (Woolworths Mona Vale) and she was referred by Woolworths to a local Physiotherapist. This did not give her any significant improvement.
>
> She saw her own doctor and was subsequently referred to Specialist Shoulder Surgeon, Dr Graeme MacDougall. Investigations were then taken, and it was identified that she had a frozen shoulder (adhesive capsulitis) on the left.
>
> Dr MacDougall tried to control her condition with conservative management. This got to a stage where two injections were administered, one with an anterior approach and the other with a posterior approach. Unfortunately, these did not help. Further treatment included more physiotherapy.
>
> She did actually return to work on lighter duties with a maximum lift of 5kg. She was also moved from the meat department to the bakery, although this still could be quite heavy work.
>
> Her further clinical management has remained conservative.
>
> - **Present treatment:**
>
> She is taking paracetamol. There is no other recorded treatment.
>
> - **Present symptoms:**
>
> Pain in the neck and both shoulders. The left shoulder is more severe than the right. Reduced movement and weakness bilaterally, although again the left side is more severe.
>
> - **Details of any previous or subsequent accidents, injuries or conditions:**
>
> No other feature has been identified with her cervical spine or either shoulder.
>
> - **General health:**
>
> This is quite good. She is not on treatment for anything else although some months ago, she developed pain in her right foot. This is still being investigated and I am unaware of any associated diagnosis.

- **Work history including previous work history:**

Mrs Coppin originally comes from the Philippines. She came to Australia in 1993 and has been here ever since.

For the last 20 years or so, she has been predominantly working as a meat packer in Woolworths. Most of this time was at the Mona Vale store.

As this condition continued, she was put on lighter duties and transferred out of the meat section into the bakery, although the condition continued.

She was then moved into the self-service checkout, where she would be moving around assisting customers and not involved with any lifting activities. Since the extensive restrictions with the COVID-19 virus, she has not been doing this job.

- **Social activities/ADL:**

Mrs Coppin is a widow. This has happened unfortunately on two occasions. She was married in the Philippines, but her husband died. She came to Australia, married an Australian gentleman and unfortunately, he died some years ago as well. The stepson who accompanied her is the direct son of this gentleman from a previous relationship. It transpired at this assessment that she actually has 5 children of her own. Most of these are in the Philippines. Currently she is living in a ground floor flat and sharing this with a friend.

She is non-smoker and non-drinker.

She has never been involved in any recreational activities although it appears to be very evident that all of her work has been physically arduous.

Her only hobbies and interests are in singing and also karaoke but with the current restrictions she cannot do much of this.

She has never been a driver.

At home she will take on some of the lightweight housework, but her friend does the rest of it."

20. The AMS conducted a physical examination of which he recorded as follows:

"Mrs Coppin was towards the lower end of average stature. She had an average build although gave the impression of being quite sturdy and strong. At this assessment she was not in obvious discomfort.

Cervical Spine. There was a lot of pain in her neck with tenderness radiating out to each side and down into the shoulder muscle mass bilaterally. Movement of the head and neck was grossly reduced with extension and lateral flexion to each side to half the normal range. Rotation to each side was a little better at two thirds of the normal range, as was flexion.

Upper Limbs. There was a completely normal range of movement of the wrists, hands and all digits. She had the following elbow movements:

MOVEMENT	RIGHT	LEFT
Flexion	140°	110°
Extension	0°	0°
Supination	80°	80°
Pronation	80°	80°

Shoulder Movements:

MOVEMENT	RIGHT	LEFT
Flexion	150°	90°
Extension	40°	10°
Abduction	140°	45°
Adduction	30°	10°
Internal rotation	60°	20°
External rotation	60°	40°

Sensation was slightly altered down the left arm in a rather patchy distribution which did not follow either a peripheral or dermatomal relationship. Reflexes were present and equivalent at the elbows (C5 and 7) and at the wrists (C6).

She was able to press backwards with her hands although this was much stronger on the right side, demonstrating weakness of the subscapularis in the left. A cautious attempt was undertaken to try to establish whether she was able to do a modest inclined push-up, assessing the serratus anterior and its nerve supply from C5, 6 and She was quite unable to do this."

21. The AMS provided the following explanation for his impairment assessment:

"Cervical Spine. The cervical spine is addressed in AMA 5, Page 392, Table 15-5. There is obvious dysfunction of the cervical spine with quite gross restriction of movement. Despite the minor patchy irritations radiating down her left arm, I was unable to convincingly demonstrate radiculopathy. She is therefore in DRE Cervical Category II, which provides a whole person impairment ranging between 5% and 8%, depending on the activities of daily living. For this she would attract a further 2%, giving 7%.

Upper Extremities – Shoulder Impairment

AMA 5 REFS	MOVEMENT	RIGHT	% RIGHT UEI	LEFT	% LEFT UEI
P 476	Flexion	150°	2	90°	6
F 16-40	Extension	40°	1	10°	2
P 477	Abduction	140°	2	45°	6
F 16-43	Adduction	30°	1	10°	1
P 479	Internal rotation	60°	2	20°	4
F 16-46	External rotation	60°	0	40°	3
Subtotals		**Right**	**8**	**Left**	**22**

From Page 439 Table 16-03 this converts to 5% WPI on the right and 13% WPI on the left.

Elbow Impairment

AMA 5 REFS	MOVEMENT	RIGHT	% RIGHT UEI	LEFT	% LEFT UEI
P 472 F 16-34	Flexion	140°	0	110°	4
	Extension	0°	0	0°	0
P 474 F 16-37	Supination	80°	0	80°	0
	Pronation	80°	0	80°	0
Subtotals		**Right**	**0**	**Left**	**4**

The referral strictly identified impairment of each shoulder and the cervical spine. Nevertheless, at this assessment, although not described elsewhere in the literature, there was a restricted range of movement of the left elbow. No history was identified to explain this other than the circumstances of this claim. If this is included in the whole person impairment, it raises the left upper extremity impairment from 13% to 15%."

22. The AMS made brief comment on the other medical opinion that was before him as follows:

"My assessment is very similar to that of Specialist Surgeon, Dr Peter Endrey-Walder in his report of 05/11/19.

With respect, I am at variance with an opinion given by Specialist Orthopaedic Surgeon, Dr Stephen Quain that all of the cervical spine condition is age related. Whilst there would almost certainly be age related features, there was no history (at all) of any pre-existing dysfunction of the cervical spine and therefore, whatever was there has been aggravated quite badly by her occupation and this level of aggravation is continuing."

23. Turning first to the complaints on appeal about the left upper extremity assessment.

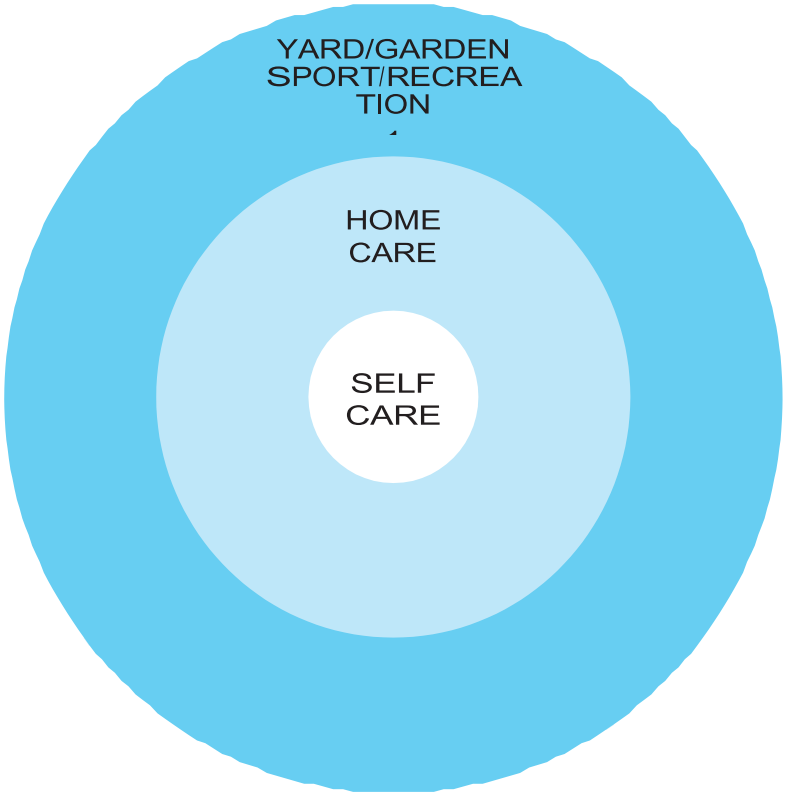
24. The appellant submitted that the AMS attributed 3% UEI to his finding of 40 degrees external rotation of the left shoulder. Under the correct application of the criteria Guidelines, Figure 16-46 1% UEI is the correct assessment for 40 degrees external rotation. The respondent worker agrees.

25. The Panel concurs that there has been error and the correct assessment is 1% UEI. This equates to 20% left UEI which equates to 12% WPI for the left upper extremity as a result of injury. The panel will accordingly revoke this aspect of the assessment.

26. Turning now to the complaints on appeal about the allowance of 2% WPI for ADLS in respect of the cervical spine assessment. The appellant submitted the allowance for 2% for ADLs was incorrectly applied or in the alternative, that he AMS failed to give adequate reasons for the allowance.

27. The guidelines provide as follows:

> "4.33 Impact of ADL. Tables 15-3, 15-4 and 15-5 of AMA5 give an impairment range for DREs II to V. Within the range, 0%, 1%, 2% or 3% WPI may be assessed using paragraphs 4.34 and 4.35 below. An assessment of the effect of the injury on ADL is not solely dependent on self-reporting, but is an assessment based on all clinical findings and other reports.
> 4.34 The following diagram should be used as a guide to determine whether 0%, 1%, 2% or 3% WPI should be added to the bottom of the appropriate impairment range. This is only to be added if there is a difference in activity level as recorded and compared to the worker's status prior to the injury.



4.35 The diagram is to be interpreted as follows: Increase base impairment by:

i. 3% WPI if the worker's capacity to undertake personal care activities such as dressing, washing, toileting and shaving has been affected
ii. 2% WPI if the worker can manage personal care, but is restricted with usual household tasks, such as cooking, vacuuming and making beds, or tasks of equal magnitude, such as shopping, climbing stairs or walking reasonable distances
iii. 1% WPI for those able to cope with the above, but unable to get back to previous sporting or recreational activities, such as gardening, running and active hobbies etc."

28. The Panel can discern no error in the assessment of 2% WPI for impact on ADLS. The assessment comprehends the restriction in performing usual household tasks for which a 2% allowance is permissible. This AMS has not based his assessment on self-report alone. His assessment is also based on his clinical findings on the day of assessment which included gross restriction of movement of the neck.

29. The appellant has submitted that the restriction in ADLS relates only to the bilateral shoulder impairments.

30. The AMS on clinical examination was satisfied that the restrictions related to the cervical spine, This accords with his clinical findings in respect of the cervical spine on the day of assessment. The panel can discern no error and considers adequate reasoning is apparent when the MAC is read as a whole. The panel will confirm this aspect of the assessment.

31. For these reasons, the Appeal Panel has determined that the Medical Assessment Certificate issued on 4 September 2020 should be revoked and a new Medical Assessment issued. A new Medical Assessment Certificate is attached to this statement of reasons.

I CERTIFY THAT THIS IS A TRUE AND ACCURATE RECORD OF THE REASONS FOR DECISION OF THE APPEAL PANEL CONSTITUTED PURSUANT TO SECTION 328 OF THE *WORKPLACE INJURY MANAGEMENT AND WORKERS COMPENSATION ACT 1998*.

A Shaw

Andrew Shaw
Dispute Services Officer
As delegate of the Registrar

WORKERS COMPENSATION COMMISSION

APPEAL PANEL
MEDICAL ASSESSMENT CERTIFICATE

Injuries received after 1 January 2002

Matter Number: **1975/20**
Applicant **Eulalia Amate Coppin**
Respondent: **Woolworths Limited**

This Certificate is issued pursuant to s 328(5) of the *Workplace Injury Management and Workers Compensation Act 1998*.

The Appeal Panel revokes the Medical Assessment Certificate of Dr Tim Anderson and issues this new Medical Assessment Certificate as to the matters set out in the Table below:

Table - Whole Person Impairment (WPI)

Body Part or system	**Date of Injury**	**Chapter, page and paragraph number in SIRA guidelines**	**Chapter, page, paragraph, figure and table numbers in AMA5 Guides**	**% WPI**	**WPI deductions pursuant to S323 for pre-existing injury, condition or abnormality** (expressed as a fraction)	**Sub-total/s % WPI** (after any deductions in column 6)
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Right upper extremity (shoulder)				5%	0	5%
Total % WPI (the Combined Table values of all sub-totals)					**22%**	

Jane Peacock
Arbitrator

Dr Brian Stephenson
Approved Medical Specialist

Dr Mark Burns
Approved Medical Specialist

18 December 2020

I CERTIFY THAT THIS IS A TRUE AND ACCURATE RECORD OF THE MEDICAL ASSESSMENT CERTIFICATE OF THE APPEAL PANEL CONSTITUTED PURSUANT TO SECTION 328 OF THE *WORKPLACE INJURY MANAGEMENT AND WORKERS COMPENSATION ACT 1998*.

A Shaw

Andrew Shaw
Dispute Services Officer
As delegate of the Registrar