WORKERS COMPENSATION COMMISSION

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

Matter Number:	**M1-5016/20**
Appellant:	**Leeanne Carol Twaddell**
Respondent:	**Charles Sturt University**
Date of Decision:	**12 February 2021**
Citation No:	**[2021] NSWWCCMA 31**

Appeal Panel:	
Arbitrator:	**R J Perrignon**
Approved Medical Specialist:	**Dr Philippa Harvey-Sutton**
Approved Medical Specialist:	**Dr James Bodel**

GROUND OF APPEAL

1. The appellant worker, Ms Twaddell, appeals from the Medical Assessment Certificate of Approved Medical Specialist Dr Kuru dated 5 November 2020.

2. Ms Twaddell was injured in the course of her duties as a cleaner on 15 November 2012, when she tripped and fell against a fence.

3. Dr Kuru assessed a 13% whole person impairment (7% lumbar spine, 5% lumbar spine - pelvis, 1% skin (scarring); 0% left lower extremity, 0% nervous system).

4. Ms Twaddell appeals from his assessment of the lumbar spine (pelvis) and left lower extremity only.

5. On 12 January 2021, the Registrar by his delegate was satisfied that the ground of demonstrable error was made out in respect of the assessment of the hip, and referred the matter to this Appeal Panel for determination.

6. On 10 February 2021, the Appeal Panel conducted a preliminary review of the original medical assessment in the absence of the parties and in accordance with the *NSW Workers Compensation Guidelines for the Evaluation of Permanent Impairment* (4th edition) (the Guidelines).

Submissions

7. Both parties have filed written submissions which have been taken into account. It is not necessary to repeat them in full, but they may be summarised briefly as follows.

8. The appellant submits that error is demonstrated for the following reasons.

    (a) The approved medical specialist should have assessed the left lower extremity by reference to the range of movement of the left hip in accordance with Table 13 at page 537 of AMA5, but failed to do so.

(b) He should have assessed the lumbar spine by reference to the extent of the appellant's joint dislocation at her left sacroiliac joint in accordance with Table 4.3 of the Guidelines, but failed to do so, because he wrongly considered that there was no such dislocation. He should have accepted that there was dislocation, in accordance with the opinions of Prof Hope, Dr Anderson and Dr Burrows, and on the basis of the x-ray report of 28 January 2015.

9. The respondent employer submits as follows.

(a) In respect of the left hip, there was no evidentiary basis for assessing permanent impairment on the basis of restricted range of movement, because the approved medical specialist examined the range of movement and found it to be normal, despite irritability on the left. He found no asymmetry of movement.

(b) In respect of the lumbar spine, the approved medical specialist made his assessment on the basis of internal fixation of the sacroiliac joint, in accordance with Table 4.3 at page 30 of the Guidelines, because he took the view that there had not been a sacroiliac joint dislocation or fracture dislocation of that limb as a result of injury. He did so after examining the x-ray evidence, and was entitled to do so.

Reasoning of the Approved Medical Specialist

10. Dr Kuru examined the worker on 23 October 2020.

11. He took a history of injury on 15 November 2012, following which her doctor, Dr Fielding, had made a provisional diagnosis of strain to the left sacroiliac joint. He noted that, after an injection into that joint failed to give significant relief, she came to left sided sacroiliac joint fusion at the hands of Dr Woodgate in 2015. Following referral to a pain management specialist, a high frequency spinal cord stimulator had been inserted.

12. The worker complained to him of, among other things, a global pain in the pelvis. Noting the terms of the referral, he examined the lumbar spine, lower extremities, and the skin. He found that 'hip range of motion was normal but irritable on the left' at [5].

13. He noted a number of radiological scans, including an x-ray of the pelvis and SI joints performed on 28 January 2015, which he considered 'unremarkable'.

14. He diagnosed at [7] 'non-specific back pain', noting also the diagnosis of sacroiliac joint strain, followed by 'sacroiliac joint fusion which has not relieved her symptoms'. We interpret his diagnosis to mean that he was not satisfied of any pathology affecting the pelvis apart from strain of the sacroiliac joint.

15. He found that, contrary to the opinion of Prof Hope, there had been no sacroiliac joint dislocation or fracture dislocation as a result of injury. He explained at [10c]:

> "She has not had this injury. …, a more appropriate assessment would be that [sic, in accordance with] SIRA Guidelines page 30, Table 4.3 paragraph 4, subsection 3, allocating 5% for internal fixation/ankylosis of the sacroiliac joint."

16. As indicated, he assessed a 7% whole person impairment (lumbar spine), based on range of motion. He explained his reasoning as follows at [10b] - emphasis added:

> "Ms Twaddell sustained an injury at work and went on to develop significant persistent symptoms without definitive radiological abnormalities. Her diagnosis is that of non-specific back pain. **On the basis that she had a clinical history of injury and she has restricted asymmetric movements in her lumbar spine**, I assess her according to AMA 5 page 384, Table 15.3 as DRE Lumbar Category II (5% WPI). According to SIRA Guidelines page 28, paragraph 4.34, I assess a further 2% on the basis of restriction of ADLs, giving 7% impairment of the lumbar spine."

17. He assessed a further 5% whole person impairment (lumbar spine - pelvis) as a result of internal fixation of the left sacroiliac joint at the hands of Dr Woodgate, in accordance with Row 4(iii), Table 4.3 of Chapter 4 of the Guidelines. Chapter 4 governs assessments of the lumbar spine.

18. He assessed a 0% whole person impairment (left lower extremity). He explained at [10c]:

> "I did not observe significant restriction of hip joint motion, hence I have not assessed impairment of the lower extremity."

19. In reaching his total assessment of 13% whole person impairment, he combined his two assessments of the lumbar spine (7% ROM, 5% for fixation of the SI joint) with 1% for scarring.

Ground 1: assessment of the left lower extremity

20. As indicated, the appellant argues that the left lower extremity should have been assessed by reference to restrictions in the range of movement at the hip. Dr Kuru examined the hip, and found that the range of movement was normal.

21. In those circumstances, there was no basis for any assessment other than 0% whole person impairment, as he did. That is so, whether or not he considered that there was a fracture at the SI joint as a result of injury, as the appellant argues that he should.

22. We can identify no error. This ground fails.

Ground 2: assessment of the lumbar spine

23. The approved medical specialist assessed a 7% whole person impairment (lumbar spine) by reference to restrictions in the range of movement. His assessment in this regard agreed with that of Prof Hope. No error is alleged.

24. He also assessed a 5% whole person impairment (lumbar spine - pelvis), in accordance with row 4(iii) in Table 4.3 at page 30 of the Guidelines. He did so on the basis of internal fixation of the left SI joint.

25. The appellant submits that he should have assessed 12% by reference to joint dislocation with a maximum residual displacement of greater than 1cm, in accordance with row 4(ii) of the Table, as did Prof Hope. This would have yielded a 12% whole person impairment.

26. Row 4(ii) of the Table is only available as a method of assessment where there has been a joint dislocation as a result of injury. Dr Kuru took the view that there had been no dislocation of the SI as a result of injury on 15 November 2012. He preferred the diagnosis of SI joint strain, initially made by the worker's treating general practitioner. He considered the radiological scans, and described them as 'unremarkable'. Dr Kuru is an experienced and respected spinal surgeon. His interpretation of the scans was well within his expertise, and in conjunction with his clinical examination was a view which was well open to him. He was not compelled to accept the contrary views of other clinicians.

27. Having rejected the diagnosis of SI joint dislocation, it was not open to him to assess the left lower extremity in accordance with Row 4(ii), as the appellant suggests he should have. He did not do so. Instead, he assessed in accordance with Row 4(iii), on the basis that the worker had come to fusion surgery of the SI joint. By assessing on this basis, he impliedly found that the fusion surgery was treatment for the strain of the SI joint which had occurred on 15 November 2012 and had not subsequently resolved.

28. In our view, that implied finding was also available on the evidence.

29. We can identify no error in his assessment. This ground also fails.

Conclusion

30. For the reasons given, the appeal is dismissed, and the Medical Assessment Certificate of Dr Kuru dated 11 November 2020 is confirmed.

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 MacLeod

Ann MacLeod
Dispute Services Officer
As delegate of the Registrar